

THE NATIONAL ARCHIVES FEDERAL REGISTER OF THE UNITED STATES

1934

VOLUME 12 NUMBER 201

Washington, Tuesday, October 14, 1947

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

LISTS OF POSITIONS EXCEPTED

The Commission has determined, at request of the Secretary of the Treasury, that the position of Radio Director in the United States Savings Bonds Division should be filled in the same manner as are positions under Schedule A. Effective upon publication in the FEDERAL REGISTER, § 6.4 (a) is amended as follows:

1. Subparagraph (3) is amended by the addition of a subdivision (xi) as follows:

§ 6.4 *Lists of positions excepted from the competitive service*—(a) *Schedule A.*

(3) *Treasury Department.* * * *
(xi) Radio Director in the United States Savings Bonds Division.

2. Subparagraph (20) (iv) *National Security Resources Board* is redesignated as subparagraph (44) (i) subparagraph (20) (v) *National Security Council*, is redesignated as subparagraph (45) (i) subparagraph (20) (vi) *Central Intelligence Agency* is redesignated as subparagraph (45) (ii) subparagraph (20) (vii) *Research and Development Board* is redesignated subparagraph (20) (iv). Subparagraphs (20) (44) and (45) of § 6.4 (a) as redesignated read as follows:

(20) *National Military Establishment: Office of the Secretary of Defense.* (i) Two private secretaries or confidential assistants to the Secretary of Defense.

(ii) Two chauffeurs for the Secretary of Defense.

(iii) Five special advisers to the Secretary of Defense.

Research and Development Board. (iv) Thirteen Executive Directors, eleven Deputy Directors, eight Scientific Warfare Advisers, two Chiefs of Branches, one Head of Section.

(44) *National Security Resources Board.* (i) Six positions of special advisers and research assistants to the Chairman.

(45) *National Security Council.* (i) Not to exceed 25 positions.

Central Intelligence Agency. (ii) All positions.

(Sec. 6.1 (a) E. O. 9830, Feb. 24, 1947, 12 F. R. 1259)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] H. B. MITCHELL,
President.

[F. R. Doc. 47-9213; Filed, Oct. 13, 1947; 9:21 a. m.]

TITLE 24—HOUSING CREDIT

Chapter VIII—Office of Housing Expediter

PART 851—ORGANIZATION DESCRIPTION INCLUDING DELEGATIONS OF FINAL AUTHORITY

DESIGNATION OF ACTING HOUSING EXPEDITER

§ 851.22 *Designation of Acting Housing Expediter.* A. H. Zwerner is hereby designated to act as Housing Expediter during my absence from October 11 to October 19, 1947, with the title "Acting Housing Expediter" with all the powers, duties, and rights conferred upon me by the Housing and Rent Act of 1947, or any other act of Congress or Executive order, and all such powers, duties, and rights are hereby delegated to such officer for such period. (Pub. Law 129, 80th Cong.)

Issued this 10th day of October 1947.

FRANK R. CREEDON,
Housing Expediter.

[F. R. Doc. 47-9265; Filed, Oct. 13, 1947; 8:46 a. m.]

TITLE 25—INDIANS

Chapter I—Office of Indian Affairs, Department of the Interior

Subchapter E—Credit to Indians

PART 28—KLAMATH TRIBAL LOAN FUND

On August 9, 1947, there was published in the daily issue of the FEDERAL REGISTER notice of intention to amend §§ 28.1 to 28.19, inclusive, of Title 25, CFR of the regulations approved by the Secretary of the Interior on December 4, 1937, as amended August 23, 1938, November 18, 1939, July 24, 1940, June 6, 1941, and July 28, 1944, and to repeal §§ 28.20 to 28.57, inclusive, of said regulations, which

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1946 SUPPLEMENT

to the

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were promulgated under authority contained in the act of Congress approved August 28, 1937 (50 Stat. 872, 25 U. S. C. 530-535, incl.), as amended. Interested persons were given opportunity to participate in preparing the proposed amendments by submitting their views and data or arguments in writing to E. Morgan Pryse, District Director, U. S. Indian Service, Building 34, Swan Island, Portland 18, Oregon, within 30 days from the date of the publication of the notice of intention in the daily issue of the FEDERAL REGISTER. No views and data or arguments having been received from in-

interested persons, and the 30 day period for submittal thereof having expired, §§ 28.1 to 28.18 inclusive of said regulations are amended as set forth below, and §§ 28.19 to 28.57, inclusive, approved by the Secretary December 4, 1937, as amended August 23, 1938, July 24, 1940, and July 28, 1944, are hereby repealed.

Sec.	
28.1	Definitions.
28.2	Purpose of regulations.
28.3	Loan board.
28.4	Eligibility.
28.5	Application.
28.6	Purpose of loans.
28.7	Approval of loans.
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28.11	Security.
28.12	Title to property.
28.13	Insurance.
28.14	Penalties on default.
28.15	Assignments.
28.16	Repayments.
28.17	Deceased borrowers.
28.18	Responsibility of superintendent.

AUTHORITY: Secs. 28.1 to 28.19, inclusive, issued under sec. 3, 50 Stat. 872; 25 U. S. C. 532.

§ 28.1 *Definitions.* Wherever used in the regulations in this part the terms defined in this section shall have the meaning herein stated.

(a) "Commissioner" means the Commissioner of Indian Affairs.

(b) "Superintendent" means the Superintendent of the Klamath Indian Agency.

(c) "District Director" means the officer in charge of the district office of the Indian Service, under which the Klamath Indian Agency is placed for administrative purposes. The authority of the District Director under these regulations may be delegated by him in writing to his subordinates in the district office.

(d) "Klamath Tribes" means the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians of the Klamath Reservation in Oregon.

(e) "Business Committee" means the Business Committee of the Klamath Tribes elected in accordance with the constitution and bylaws approved by the Commissioner.

(f) "Board" means the Klamath Loan Board elected in accordance with the regulations in this part.

(g) "Fund" means the reimbursable loan fund authorized by the acts of August 28, 1937 and August 7, 1939 (50 Stat. 872, 53 Stat. 1253, 25 U. S. C. 530-535, 542 (a)).

(h) "Loan agreement" means the approved application, supporting papers, commitment order, and note or notes.

§ 28.2 *Purpose of regulations.* The purpose of the regulations in this part is to prescribe the terms and conditions of loans from the fund.

§ 28.3 *Loan board.* The fund shall be administered by a Board of three adult enrolled members of the Klamath Tribes.

(a) *Election.* Board members shall be elected by the Klamath General Council. The Commissioner may prescribe detailed election procedures which are not inconsistent with the provisions of this

section. Only adult enrolled members, or minor enrolled members who are heads of families shall be entitled to vote. Voting shall be by secret ballot. The members of the present Board shall remain in office until their terms expire, unless suspended under the regulations in this part. Thereafter, one new member shall be elected each year for a term of three years, or until his successor is elected. The candidate receiving the highest number of votes shall be deemed to have been elected. If a vacancy occurs, a successor shall be elected at a special meeting of the Klamath General Council at which the same procedure shall be followed as in the case of a regular election. The person so elected shall serve only for the unexpired term of the member whom he replaces.

(b) *Officers.* Each year within 30 days after the election of a new member, the Board shall meet and elect from among its members, a chairman and a vice-chairman. The Board shall select and employ a secretary, who shall not be a member of the Board.

(c) *Duties of officers.* The chairman shall preside at meetings of the Board, perform acts and other duties usually performed by a presiding officer, and sign papers as authorized or directed by the Board. The vice-chairman shall perform the duties of chairman during his absence, or as authorized by the Board. The secretary shall keep a complete record of all meetings of the Board, make reports, and perform such other duties as may be required by the Board.

(d) *Meetings.* The Board shall meet at least once each month, but shall not meet oftener than once a week, unless the Business Committee authorizes meetings to be held oftener during a specified period of time when the volume of business justifies more frequent meetings.

(e) *Quorum.* Two members shall constitute a quorum.

(f) *Suspension.* The Business Committee may suspend a member of the Board at any time for cause, notice of which shall be given to the member in writing. A suspended member shall have no authority to act for or on the Board during a period of suspension. The Commissioner may suspend all powers of the Board if he finds after investigation that the Board is being administered in a manner detrimental to the interests of the tribe. In case more than one member has been suspended by the Business Committee at a particular time, or if the Commissioner has suspended all powers of the Board, the Superintendent may exercise such functions of the Board as may be necessary to protect the funds loaned, but new loans may not be made during such period.

(g) *Expenses.* The Board may hire clerical and other assistance necessary to administer the fund. Salaries of Board members, and expenditures in connection with the business of the Board, may be paid as administrative expenses. Necessary travel by members of the Board, or by officers and employees of the Board, by common carrier, shall be on Government transportation requests in accordance with existing Government travel regulations. Transportation requests shall be issued by the

Superintendent. All claims for services rendered shall be submitted to the Superintendent on a form provided by him for that purpose. All claims of whatever nature shall be subject to audit and approval by the Superintendent.

(h) *Budget.* The Board shall, at the beginning of each fiscal year, submit to the Business Committee for approval a written budget of estimated income from interest and service fees and estimated expenses for the ensuing fiscal year. The budget shall show the rate of compensation to Board members and employees, the amount outstanding in loans, the amount delinquent, and potential losses. Budgets shall be acted upon by the Business Committee, and, if approved, shall constitute the Superintendent's authority to make disbursements thereunder as expenses are incurred, *Provided*, That no disbursements shall be made in excess of the amount of income received from interest and service fees, or in violation of any of the regulations in this part. Budgets may be modified by the Business Committee upon request of the Board.

§ 28.4 *Eligibility.* Loans may be made to enrolled members of the Klamath Tribes, and to cooperative associations of members, *Provided*, That the articles of association and bylaws of cooperative associations must be approved by the District Director.

§ 28.5 *Application.* Applications shall be submitted to the Board on a form approved by the Commissioner. Each application shall indicate the purposes for which the loan is to be used, the period of the loan, the rate of interest and amount of service fees to be paid, the security to be given, and the procedures to be followed in handling and repaying the loan.

§ 28.6 *Purpose of loans.* Loans may be made for any purpose authorized by section 2 of the act of August 23, 1937 (50 Stat. 872; 25 U. S. C. 531).

§ 28.7 *Approval of loans.* Loan agreements must be executed on a form approved by the Commissioner.

(a) *Action by Board.* Action on applications shall require an affirmative vote of at least two members of the Board. In order to receive final approval, all loans must be acted upon favorably by the Board.

(b) *Approval by Board.* Except as otherwise indicated in these regulations, the Board shall have authority to approve loans where the applicant's total indebtedness to the fund will not exceed \$2,000.

(c) *Approval by Superintendent.* Except as otherwise indicated in the regulations in this part, loans acted upon favorably by the Board, where the applicant's total indebtedness to the fund will exceed \$2,000 but not exceed \$3,000 may be approved by the Superintendent.

(d) *Approval by District Director.* Except as otherwise indicated in the regulations in this part, loans acted upon favorably by the Board where the applicant's indebtedness to the fund will exceed \$3,000 but not exceed \$5,000, may be approved by the District Director.

Loans to cooperatives; loans for the purchase of livestock, equipment, or machinery with maturities exceeding six years; loans with maturities exceeding ten years; educational loans; and loans to individuals who are Government employees shall require approval of the District Director regardless of amount. Burial loans in excess of \$500; emergency loans in excess of \$500 to applicants who do not have security adequate to protect the loans; and loans for maintenance and support of aged, infirm, or incapacitated members in excess of \$500 shall also require approval of the District Director.

(e) *Approval by Commissioner.* All loans in excess of \$5,000 shall require approval by the Commissioner.

(f) *Restrictions on approval.* Loans shall not be approved for less than \$25. Any loans to borrowers who are delinquent in payment of previous indebtedness to the fund shall require the approval of the Business Committee in addition to the approvals set forth in other sections of the regulations in this part. Not more than two loan agreements may be in effect with the same borrower at the same time. Only joint loans may be made to a husband and wife who are both eligible for loans, and any existing loan to either spouse shall be consolidated with such loan.

(g) *Amount of loans.* The amounts set forth in the regulations in this part refer to the total amounts of loans, regardless of whether they are joint or partnership loans.

(h) *Modifications.* Modifications of loan agreements involving the extension of the terms of repayment shall require approval of the District Director. Other modifications shall be handled through the same channels as the original applications, except that the District Director may approve modifications of loan agreements approved originally by the Commissioner in cases in which the amounts of the loans are not increased.

§ 28.8 *Interest and service fees.* Borrowers shall pay 3 percent interest annually on the basis of 360 days per annum, from the date the funds are advanced on the loan until they are repaid. No interest shall, however, be charged on educational loans. Except on loans for educational purposes, and loans for the maintenance and support of aged, infirm, and incapacitated members, service fees may be charged on loans. A schedule of service fees shall be established by the Business Committee; provided that such fees shall not exceed the amounts set forth in the following table:

Loans of \$500 or less:
5 percent of the amount of the loan.
Over \$500 but not over \$1,000:
\$25 plus 4 percent of amount over \$500.
Over \$1,000 but not over \$1,500:
\$45 plus 3 percent of amount over \$1,000.
Over \$1,500 but not over \$2,000:
\$60 plus 2 percent of amount over \$1,500.
Over \$2,000:
\$70 plus 1 percent of amount over \$2,000.

§ 28.9 *Records and reports.* The Board shall keep records and accounts and make signed reports as directed by the Commissioner. Borrowers shall be required to furnish such information as

the duly authorized representative of the Commissioner, the Board, or the Business Committee may deem necessary to provide proper information regarding the status of loans.

§ 28.10 *Maturity.* The period of maturity of loans shall be determined according to the circumstances. Crop loans, and loans for the purchase of non-recoverable items, shall not be made with maturities exceeding one year, except when the loans are for enterprises from which insufficient income will be received the first year to repay the loan in full.

§ 28.11 *Security.* Borrowers shall furnish security, if available, up to an amount adequate to protect the loan. Security papers shall be filed in accordance with State laws, except that liens on trust property other than crops, and assignments of income from trust property may be filed in the Klamath Agency office. If authorized by the Board, filing costs may be paid as an administrative expense of the Board.

§ 28.12 *Title to property.* Unless otherwise provided in the borrower's loan agreement, title to all property purchased with loans shall be taken in the name of the United States in trust for the Klamath Tribes.

§ 28.13 *Insurance.* Buildings with a total value of \$500 or more purchased with or constructed with the proceeds of loans, or pledged as security for loans, shall be insured against loss by fire. Borrowers may be required to insure other property given as security, or purchased with borrowed funds, against loss by fire or other cause.

§ 28.14 *Penalties on default.* Unless the loan agreement otherwise provides, failure on the part of any borrower to conform to the terms of the loan agreement, or to make every honest effort to continue operations successfully, will be deemed grounds for any one or all of the following steps to be taken at the option of the Board: (a) Discontinue any further advances of funds contemplated by the loan agreement; (b) take possession of any or all collateral given as security and the property purchased with borrowed funds; (c) prosecute legal action against the borrower, or against officers of cooperative associations; (d) declare the entire amount advanced immediately due and payable; (e) prevent further disbursements of borrowed funds under the control of the borrower; (f) in the case of cooperative associations, liquidate or operate, or arrange for the operation of the association until its indebtedness is paid, or until the Board has received acceptable assurance of its repayment and of compliance with the loan agreement.

In the event the Board fails to take action which the Superintendent deems necessary to protect a loan, the Superintendent shall advise the Business Committee in writing of the failure of the Board to act, and state whatever action he deems necessary. The Business Committee may then take any of the steps set forth in this section which the Board could have taken.

§ 28.15 *Assignment.* The Board may not assign any loan agreement or any interest therein to a third party, discount paper or borrow money without the approval of the Commissioner.

§ 28.16 *Repayments.* Repayments on loans shall be made to the bonded Government disbursing agent or his authorized representative, who shall issue an official receipt therefor.

§ 28.17 *Deceased borrowers.* The Board shall take all steps necessary to safeguard property purchased with or given as security for loans by deceased borrowers, until the loans are paid in full, or until the indebtedness is assumed by heirs or other parties in accordance with instructions of the Commissioner.

§ 28.18 *Responsibility of superintendent.* The Superintendent shall advise the Business Committee in writing of any loans approved by the Board in violation of the regulations in this part. No disbursements shall be made by the Superintendent on such loans. The Superintendent shall also advise the Business Committee in writing of any loans approved by the Board which are believed by him to be unsound, and he may withhold disbursements on such loans until they receive the approval of the Business Committee. The Superintendent shall report to the Business Committee any borrowers who are delinquent in payment of either principal or interest on their loans for a period longer than thirty days. The Business Committee shall advise the Board of the action which it deems necessary to protect the loan. In the event the Board fails to take such action within ten days, the Business Committee may act.

WILLIAM E. WARNE,
Assistant Secretary of the Interior

SEPTEMBER 30, 1947.

[F. R. Doc. 47-9209; Filed, Oct. 13, 1947;
9:00 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter I—Secretary of Defense

[Transfer Order 2]

ORDER TRANSFERRING CERTAIN FUNCTIONS, POWERS AND DUTIES PRESCRIBED IN OFFICER PERSONNEL ACT OF 1947 (PL 381) FROM DEPARTMENT OF THE ARMY TO DEPARTMENT OF THE AIR FORCE

Pursuant to the authority vested in me by the National Security Act of 1947 (Act of July 26, 1947· Pub. Law 253, 80th Cong.) and in order to effect certain transfers authorized or directed therein, *It is hereby ordered as follows:*

1. All functions, powers and duties prescribed in the Officer Personnel Act of 1947 (Act of Aug. 7, 1947, Pub. Law 381, 80th Cong.) for the Secretary of the Army and the Department of the Army insofar as they pertain to the officers of the Department of the Air Force are hereby transferred to the Secretary of the Air Force and the Department of the Air Force.

2. The transfers directed herein shall be effective at 12:00 noon on 1 October 1947.

(Pub. Law 253, 80th Cong.)

JAMES FORRESTAL,
Secretary of Defense.

OCTOBER 1, 1947.

[F. R. Doc. 47-9200; Filed, Oct. 13, 1947;
8:46 a. m.]

TITLE 36—PARKS AND FORESTS

Chapter II—Forest Service, Department of Agriculture

PART 201—NATIONAL FORESTS

TRANSFER OF LANDS FROM UMPIQUA NATIONAL FOREST TO SISKIYOU NATIONAL FOREST, OREGON

CROSS REFERENCE: For order affecting the tabulation contained in § 201.1, see Public Land Order 413 under Title 43, *infra*, transferring certain lands from the Umpqua National Forest to the Siskiyou National Forest.

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Order 2363]

PART. 50—ORGANIZATION AND PROCEDURE PUBLIC LAND WITHDRAWALS

In order to allow 60 days, instead of 30 days, for the filing of objections to a public land withdrawal order, where the lands involved are situated in Alaska, paragraph 3 of Order No. 2232 of July 24, 1946 (11 F. R. 8168) is amended by adding after the first sentence thereof the following: "Where the lands involved are situated in Alaska, 60 days from the date of the publication of the notice, instead of 30 days, will be allowed for the filing of the objections."

NOTE: Order 2232, effective July 24, 1946, was incorporated by reference in § 50.152 of this chapter (11 F. R. 177A-197). The order, as amended, is herewith codified as § 50.152.

§ 50.152 *Withdrawals*. The following policy will be observed in connection with the withdrawal of Federal public lands by Executive order or public land order where the withdrawal is at the instance of an agency of this Department:

(a) The draft order when presented to the Secretary for signature should be accompanied by a memorandum explaining the necessity for and the purpose of the withdrawal in reasonably complete detail, including also a statement of the areas and interests that may be affected by it.

(b) Whenever feasible the agency proposing a withdrawal shall by public notice and hearing, or otherwise, secure and transmit the views of interested persons, on the desirability of making the withdrawal before it is submitted to the Secretary for signature.

(c) Publication of the order in the FEDERAL REGISTER, and through the Division of Information, in every case may,

and in those cases where no prior hearing has been held as provided in paragraph (b) of this section shall be accompanied by a notice to the public that for thirty days thereafter the Department will receive objections to the order. Where the lands involved are situated in Alaska, 60 days from the date of the publication of the notice, instead of 30 days, will be allowed for the filing of the objections. Such objections should be in writing, should be addressed to the Secretary and should be filed in duplicate in Washington.

(d) In cases where objection is filed and the nature of the opposition is such as to warrant it, a public hearing shall within 15 days be announced by the Secretary to be held at a convenient time and place where opponents to the order may state their views and where the proponents of the order can explain its purpose, intent and extent. The hearings officer, who shall be designated by the Secretary, shall file a report with recommendations within 30 days after the conclusion of the hearing.

(e) If upon the expiration of the time for filing protests it is determined by the Secretary that no hearing is to be held, the head of the bureau originating the withdrawal shall report to the Secretary the substance of any objections filed and his recommendation to rescind, modify, or let stand the order of withdrawal. Notice of the final action of the Secretary shall be given to all interested parties of record and the general public.

WILLIAM E. WARNE,
Assistant Secretary of the Interior.

OCTOBER 3, 1947.

[F. R. Doc. 47-9115, Filed, Oct. 13, 1947;
8:45 p. m.]

Appendix—Public Land Orders

[Public Land Order 413]

OREGON

TRANSFER OF LANDS FROM THE UMPIQUA NATIONAL FOREST TO THE SISKIYOU NATIONAL FOREST

By virtue of the authority vested in the President by the act of June 4, 1897, 30 Stat. 11, 36 (U. S. C. Title 16, sec. 473), and pursuant to Executive Order No. 9337 of April 24, 1943, and upon the recommendation of the Secretary of Agriculture, it is ordered as follows:

The following-described lands within the exterior boundaries of the Umpqua National Forest are hereby transferred to the Siskiyou National Forest:

WILLAMETTE MERIDIAN

T. 28 S., R. 10 W.,

sec. 8;

secs. 17 to 20, inclusive;

sec. 21, S½,

sec. 22, S½,

secs. 27 to 30, inclusive;

sec. 34.

T. 29 S., R. 10 W.,

secs. 2, 6, 11, 12, 14 and 23.

T. 30 S., R. 10 W.,

secs. 6, 7, and 18.

It is not intended by this order to give a national-forest status to any publicly-

owned lands which have not hitherto had such a status, or to change the status of any publicly-owned lands which have hitherto had national-forest status.

OSCAR L. CHAPMAN,
Acting Secretary of the Interior.

OCTOBER 6, 1947.

[F. R. Doc. 47-9169; Filed, Oct. 13, 1947;
8:52 a. m.]

TITLE 46—SHIPPING

Chapter I—Coast Guard: Inspection and Navigation

Subchapter K—Seamen

[CGFR 47-50]

PROMULGATION OF REGULATIONS

A notice regarding proposed changes in the regulations for casualty and accident investigations and suspension and revocation proceedings was published in the FEDERAL REGISTER dated February 18, 1947 (12 F. R. 1109), and a public hearing was held by the Merchant Marine Council March 27, 1947, at Washington, D. C.

The purpose of the regulations for casualty and accident investigations and suspension and revocation proceedings is to carry out the intent of R. S. 4450, as amended (46 U. S. C. 239) and the Administrative Procedure Act (Public Law 404, 79th Congress, 60 Stat. 233), and to obtain the correct and uniform administration of the statutes. All the written and oral comments and suggestions submitted were considered by the Merchant Marine Council and where practicable were incorporated into the regulations.

The regulations for casualty and accident investigations and suspension and revocation proceedings had to be revised to comply with the changes in the statutes made by Reorganization Plan No. 3 of 1946 (11 F. R. 7875), and the Administrative Procedure Act. The regulations separate insofar as possible procedural requirements from substantive requirements and provide definite procedures to be followed in investigations and suspension and revocation proceedings. To accomplish the required changes it was necessary to cancel the regulations in 46 CFR Parts 136 and 137 suspended by the Commandant, United States Coast Guard, on August 26, 1942 (7 F. R. 6778) and the temporary wartime rules published in 46 CFR 136.100 and 136.112, inclusive.

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1946, 11 F. R. 7875, the following amendments to the regulations are prescribed which shall become effective thirty-one days after date of publication of this document in the FEDERAL REGISTER:

PART 136—MARINE INVESTIGATION REGULATIONS

The regulations in Part 136 which were suspended by the Commandant, U. S. Coast Guard, on August 26, 1942 (7 F. R. 6778, 46 CFR, Cum. Supp., Part 136, note), are canceled. The temporary wartime rules in § 136.100 to 136.112, inclusive, are canceled on the effective date of this

document, except for all proceedings in process of disposition which shall be concluded in accordance with the rules in §§ 136.100 to 136.112, inclusive. Following regulations are prescribed which shall be effective 31 days after date of publication of this document in the FEDERAL REGISTER:

SUBPART 136.01—AUTHORITY AND SCOPE OF REGULATIONS

Sec.
136.01-1 Authority and scope of regulations.

SUBPART 136.03—DEFINITIONS

136.03-1 Marine casualty or accident.
136.03-5 Major marine casualty.
136.03-10 Party in interest.
136.03-15 Commandant.
136.03-20 Coast Guard district.
136.03-25 District Commander.
136.03-30 Investigating officer.
136.03-35 Examiner.
136.03-40 Public vessels.

SUBPART 136.05—NOTICE OF MARINE CASUALTY AND VOYAGE RECORDS

136.05-1 Notice of marine casualty.
136.05-5 Substance of marine casualty notice.
136.05-10 Report by officer in charge of vessel in person.
136.05-15 Voyage records, retention of.
136.05-20 Report of accident to aid to navigation.

SUBPART 136.07—INVESTIGATIONS

136.07-1 Commandant or District Commander to order investigation.
136.07-5 Investigating officers, powers of.
136.07-7 Opening statement.
136.07-10 Report of investigation.
136.07-15 Recommendations, action on.
136.07-20 Transfer of jurisdiction.
136.07-25 Testimony of witnesses in other districts, depositions.
136.07-30 Testimony of witnesses under oath.
136.07-35 Counsel for witnesses and parties in interest.
136.07-40 Coast Guard vessels involved in marine casualties.
136.07-42 Marine casualties occurring within the scope of Coast Guard rescue operations.
136.07-45 Foreign units of Coast Guard, investigation by.
136.07-50 Marine Board of Investigation, recommendations for.
136.07-55 Information to be furnished Marine Board of Investigation.

SUBPART 136.09—MARINE BOARD OF INVESTIGATION

136.09-1 Commandant to designate.
136.09-5 Powers of Marine Board of Investigation.
136.09-10 Witnesses, payment of.
136.09-15 Time and place of investigation, notice of; rights of witnesses, etc.
136.09-20 Record of proceedings.
136.09-25 U. S. Attorney to be notified.
136.09-30 Action on report.
136.09-35 Preferment of charges.

SUBPART 136.11—WITNESSES AND WITNESS FEES

136.11-1 Employees of vessels controlled by Army or Navy as witnesses.
136.11-5 Coercion of witnesses.
136.11-10 Witness fees, subsistence, and mileage.

SUBPART 136.12—TESTIMONY BY INTERROGATORIES AND DEPOSITIONS

136.12-1 Application, procedure, and admissibility.

SUBPART 136.13—DISCLOSURE OF RECORDS

136.13-1 Record of investigation.
136.13-5 Records held confidential.
136.13-10 Production upon subpoena.

SUBPART 136.15—PERSONS IN SERVICE OF COAST GUARD

Sec.
136.15-1 Persons in service of Coast Guard.

SUBPART 136.19—CONSTRUCTION OF REGULATIONS AND RULES OF EVIDENCE

136.19-1 Construction of regulations.
136.19-5 Adherence to rules of evidence.

SUBPART 136.21—COMPUTATION OF TIME

136.21-1 Computation of time.

SUBPART 136.23—EVIDENCE OF CRIMINAL LIABILITY

136.23-1 Evidence of criminal liability.

AUTHORITY: §§ 136.01-1 to 136.23-1, inclusive, issued under R. S. 4450, as amended, 49 Stat. 1544, and sec. 5 (e), 55 Stat. 244, Public Law 404, 79th Cong., 60 Stat. 237; 5 U. S. C. Sup., 1001 et seq., 46 U. S. C. 239, 367, 50 U. S. C. 1275.

SUBPART 136.01—AUTHORITY AND SCOPE OF REGULATIONS

§ 136.01-1 *Authority and scope of regulations.* The regulations in this part, promulgated pursuant to the provisions of Title 46 U. S. Code, section 239, as amended (R. S. 4450) shall govern the conduct of investigations relating to:

(a) Marine casualties and accidents; and,

(b) Acts in violation of Title 46 U. S. Code, sections 170, 214, 215, 222, 224, 224a, 226, 228-234, 239, 240, 361, 362, 364, 367, 371-373, 375-382, 384, 385, 391, 391a, 392, 393, 399, 400, 402-416, 435-440, 451-453, 460-463, 464, 467, 470-481, 482, 489-498, or Title 50 U. S. Code, section 1275, or any of the regulations issued thereunder or,

(c) Acts of incompetency or misconduct committed by any licensed officer or holder of a certificate of service when such acts are committed in connection with any marine casualty or accident.

SUBPART 136.03—DEFINITIONS OF TERMS USED

§ 136.03-1 *Marine casualty or accident.* (a) The term "marine casualty or accident" shall mean any casualty or accident involving any vessel other than public vessels if such casualty or accident occurs upon the navigable waters of the United States, its territories or possessions, or any casualty or accident wherever such casualty or accident may occur involving any United States' vessel which is not a public vessel. (See § 136.03-40 for definition of "Public Vessel.")

(b) A marine casualty or accident shall include any occurrence involving a vessel which results in damage by or to the vessel, its apparel and gear, and/or cargo, or injury or loss of life of any of its crew or passengers; and includes inter alia, collisions, strandings, groundings, foundering, heavy weather damage, fires, explosions, failure of gear and equipment and any other damage which might affect and/or impair the seaworthiness thereof.

§ 136.03-5 *Major marine casualty.* A casualty shall be considered a major marine casualty whenever it indicates serious damage to material and results in loss of life or serious injury to crew and/or passengers. A casualty may also be deemed a major marine casualty when the circumstances or unusual con-

ditions thereof are of such a nature that the proper investigation cannot be accomplished solely by an investigating officer.

§ 136.03-10 *Party in interest.* The term "party in interest" shall mean any person whom the Marine Board of Investigation or the investigating officer shall find to have a direct interest in the investigation conducted by it and shall include an owner, a charterer, or the agent of such owner or charterer of the vessel or vessels involved in the marine casualty or accident, and all licensed or certificated personnel whose conduct, whether or not involved in a marine casualty or accident is under investigation by the Board or investigating officer.

§ 136.03-15 *Commandant.* The Commandant, U. S. Coast Guard, is that officer who acts as chief of the Coast Guard and is charged with the administration of the Coast Guard.

§ 136.03-20 *Coast Guard district.* A Coast Guard district is one of the geographical areas whose boundaries are described in 33 CFR 1.10-5 (12 F. R. 4348)

§ 136.03-25 *District Commander.* The District Commander is the chief of a Coast Guard district and is charged with the administration of all Coast Guard responsibilities and activities within his respective district, except those functions of examiners under the Administrative Procedure Act (Public Law 404, 79th Cong., 60 Stat. 238, 5 U. S. C. Sup., 1001 et seq.) and activities of independent units of the Coast Guard, such as the Coast Guard Yard and the Coast Guard Academy.

§ 136.03-30 *Investigating officer.* An investigating officer is an officer or employee of the Coast Guard designated by the Commandant or the District Commander for the purpose of making investigations of marine casualties and accidents or other matters pertaining to the conduct of seamen.

§ 136.03-35 *Examiner.* An examiner shall mean an officer or employee of the Coast Guard or other person designated by the Commandant for the purpose of conducting hearings arising under 46 U. S. Code, section 239.

§ 136.03-40 *Public vessels.* Vessels within the statutory exemptions of Title LII of the Revised Statutes of the United States (R. S. 4399-4500) (as amended) relating to the inspection of vessels, are public vessels, and therefore not subject to the regulations in this part. To be deemed public vessels such vessels must:

(a) Be used for a public purpose, not in trade or commercial service; and,

(b) Be owned outright by the United States; it is not sufficient that the United States holds the vessel under a bareboat charter.

SUBPART 136.05—NOTICE OF MARINE CASUALTY AND VOYAGE RECORDS

§ 136.05-1 *Notice of marine casualty.* The owner, agent, master, or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest marine inspection

office of the Coast Guard whenever the casualty results in any of the following:

- (a) Actual physical damage to property in excess of \$1500.00;
- (b) Material damage affecting the seaworthiness or efficiency of a vessel;
- (c) Stranding or grounding;
- (d) Loss of life; or,
- (e) Injury causing any person to remain incapacitated for a period in excess of 72 hours.

§ 136.05-5 *Substance of marine casualty notice.* The notice required in § 136.05-1 shall show the name and official number of the vessel involved, the owner or agent thereof, and insofar as is practicable, the nature and probable occasion of the casualty, the locality in which it occurred, the nature and extent of injury to personnel and the damage to property.

NOTE: The locations of the marine inspection offices and the Coast Guard districts in which located are specified in 33 CFR 1.10-20 (11 F. R. 177A-76).

§ 136.05-10 *Report by officer in charge of vessel in person.* In addition to the notice required by § 136.05-1, the person in charge of the vessel shall, as soon as possible, report in writing and in person to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival: *Provided*, That when from distance it may be inconvenient to report in person it may be done in writing only. The written report required herein for personal accident not involving death shall be made on Form CG-924-E, Report of Personal Accident Not Involving Death. For all other marine casualties or accidents reports shall be made on Form CG-2692, Report of Marine Casualty (or Accident). If filed without delay the forms CG-924-E or CG-2692 may also provide the notice required by section 136.05-1.

§ 136.05-15 *Voyage records, retention of.* (a) The owner, agent, master, or person in charge of any vessel involved in a marine casualty shall retain such voyage records as are maintained by the vessel, such as both rough and smooth deck and engine room logs, bell books, navigation charts, navigation work books, compass deviation cards, gyro records, stowage plans, records of draft, aids to mariners, night order books, radiograms sent and received, radio logs, crew and passenger lists, articles of shipment, official logs and other material which might be of assistance in investigating and determining the cause of the casualty. The owner, agent, master, other officer or person responsible for the custody thereof, shall make these records available upon request, to a duly authorized investigating officer, examiner, officer, or employee of the Coast Guard.

(b) The investigating officer may substitute photostatic copies of the voyage records referred to in paragraph (a) of this section when they have served their purpose and return the original records to the owner or owners thereof.

§ 136.05-20 *Report of accident to aid to navigation.* Whenever a vessel collides with a lightship, buoy, or other aid to navigation under the jurisdiction of

the Coast Guard, or is connected with any such collision, it shall be the duty of the person in charge of such vessel to report the accident to the nearest Officer in Charge, Marine Inspection. No report on Form CG-2692 is required unless one or more of the results listed in section 136.05-1 occur.

SUBPART 136.07—INVESTIGATION

§ 136.07-1 *Commandant or District Commander to order investigation.* (a) The Commandant or District Commander, upon receipt of information of a marine casualty or accident, will immediately cause such investigation as may be necessary in accordance with the regulations in this part.

(b) The investigations of marine casualties and accidents and the determinations made are for the purpose of taking appropriate measures for promoting safety of life and property at sea, and are not intended to fix civil or criminal responsibility.

(c) The investigation will determine as closely as possible:

- (1) The cause of the accident;
- (2) Whether any failure of material (either physical or design) was involved or contributed to the casualty, so that proper recommendations for the prevention of the recurrence of similar casualties may be made;
- (3) Whether any act of misconduct, inattention to duty, negligence or wilful violation of the law on the part of any licensed or certificated man contributed to the casualty, so that appropriate proceedings against the license or certificate of such person may be recommended and taken under Title 46, U. S. Code, section 239;
- (4) Whether any Coast Guard personnel or any representative or employee of any other government agency or any other person caused or contributed to the cause of the casualty; or,
- (5) Whether the accident shall be further investigated by a Marine Board of Investigation in accordance with regulations in Subpart 136.09.

§ 136.07-5 *Investigating officers, powers of.* (a) An investigation of all marine casualties or accidents reported pursuant to § 136.05-1 will be made by an investigating officer designated by the Commandant or the District Commander.

(b) Such investigating officer shall have the power to administer oaths, subpoena witnesses, require persons having knowledge of the subject matter of the investigation to answer questionnaires and require the production of relevant books, papers, documents and other records.

(c) Attendance of witnesses or the production of books, papers, documents or any other evidence shall be compelled by a similar process as in the United States District Court.

§ 136.07-7 *Opening statement.* The investigating officer or the Chairman of a Marine Board of Investigation shall open the investigation by announcing the statutory authority for the proceeding and he shall advise parties in interest concerning their rights to be represented by counsel, to examine and cross-exam-

ine witnesses, and to call witnesses in their own behalf.

§ 136.07-10 *Report of investigation.* (a) At the conclusion of the investigation the investigating officer shall submit to the Commandant via the Officer in Charge, Marine Inspection, and the District Commander, a full and complete report of the facts as determined by his investigation, together with his opinions and recommendations in the premises. The District Commander shall forward the investigating officer's report to the Commandant with an indorsement stating:

- (1) Approval or otherwise of the findings of fact, conclusions and recommendations;
- (2) Any action taken with respect to the recommendations;
- (3) Whether or not any action has been or will be taken under Part 137 to suspend or revoke licenses or certificates; and,
- (4) Whether or not violations of laws or regulations relating to vessels have been reported on Form CG 2636, report of violation of navigation laws.

(b) Investigating officers in foreign ports shall forward their reports directly to the Commandant.

§ 136.07-15 *Recommendations, action on.* Where the recommendations of an investigating officer are such that their accomplishment is within the authority of the District Commander or any of the personnel under his command, immediate steps shall be taken to put them into effect and his forwarding indorsement shall so indicate.

§ 136.07-20 *Transfer of jurisdiction.* When it appears to the District Commander that it is more advantageous to conduct an investigation in a district other than in the district where the casualty was first reported, that officer shall transfer the case to the other district together with any information or material relative to the casualty he may have.

§ 136.07-25 *Testimony of witnesses in other districts, depositions.* When witnesses are available in a district other than the district in which the investigation is being made, testimony or statements shall be taken from witnesses in the other districts by an investigating officer and promptly transmitted to the investigating officer conducting the investigation. Depositions may be taken in the manner prescribed by regulations in Subpart 136.12.

§ 136.07-30 *Testimony of witnesses under oath.* Witnesses to marine casualties or accidents appearing before an investigating officer shall be placed under oath and their testimony may be reduced to writing. Written statements and reports submitted as evidence by witnesses shall be sworn to before an officer authorized to administer oaths and such statements and/or reports shall be signed.

§ 136.07-35 *Counsel for witnesses and parties in interest.* (a) All parties in interest shall be allowed to be represented by counsel, to examine and cross-

examine witnesses and to call witnesses in their own behalf.

(b) Witnesses who are not parties in interest may be assisted by counsel for the purpose of advising such witnesses concerning their rights; however, such counsel will not be permitted to examine or cross-examine other witnesses or otherwise participate in the investigation.

§ 136.07-40 *Coast Guard vessels involved in marine casualties.* (a) In the event a Coast Guard vessel is involved in a collision with a private vessel such casualty will not be investigated separately pursuant to regulations in § 136.07-1 or in Subpart 136.09, or pursuant to Chapter XVIII, Coast Guard Courts and Boards, 1935, but shall be investigated by an officer or officers of the Coast Guard, designated by the District Commander, both in the capacity of:

(1) An investigating officer pursuant to regulations in § 136.07-1, in which capacity the report will embody the elements required by regulations in this part; and,

(2) A Board of Investigation pursuant to Chapter XVIII, Coast Guard Courts and Boards, 1935, and in which capacity the report will also conform to the requirements of Coast Guard Boards of Investigation as set forth in Chapter XVIII, Coast Guard Courts and Boards, 1935.

(b) The District Commander will designate a recorder for investigations where necessary.

§ 136.07-42 *Marine casualties occurring within the scope of Coast Guard rescue operations.* (a) Where a marine casualty or accident occurs within the scope of rescue operations of the Coast Guard, attendant with loss of life, such casualty will not be investigated separately pursuant to regulations in § 136.07-1 or in Subpart 136.09 or pursuant to the act of June 18, 1878 as amended (20 Statute 164, as amended, 38 Statute 800; 14 U. S. C. 111) and Chapter XVIII, Art. 908, Coast Guard Courts and Boards, 1935, but shall be investigated by an officer or officers designated by the District Commander, both in the capacity of:

(1) An investigating officer pursuant to the regulations in § 136.07-1, in which capacity the report will embody the elements required by regulations in this part; and,

(2) A Board of Investigation pursuant to Chapter XVIII, Art. 908, Coast Guard Courts and Boards, 1935, and in which capacity the report will also conform to the requirements of Coast Guard Board of Investigation as set forth in Chapter XVIII, Art. 908, Coast Guard Courts and Boards, 1935.

(b) The District Commander will designate a recorder for investigation where necessary.

§ 136.07-45 *Foreign units of Coast Guard, investigation by.* Investigations of marine casualties conducted by foreign units of the Coast Guard shall be in accordance with the regulations in this part and all actions taken in connection with the investigations of such marine casualties entered in the official log(s) of the vessel(s) concerned.

§ 136.07-50 *Marine Board of Investigation, recommendations for.* When the District Commander is of the opinion, as a result of an investigation under § 136.07-1, or otherwise, that a marine casualty or accident is a major marine casualty (See § 136.03-5) that officer shall immediately inform the Commandant by dispatch with his recommendation whether a further investigation by a Marine Board of Investigation shall be conducted.

§ 136.07-55 *Information to be furnished Marine Board of Investigation.* When a Marine Board of Investigation is convened in accordance with § 136.09-1, the investigating officer shall immediately furnish the board with all testimony, statements, reports, documents, papers, a list of witnesses including those whom he has examined, other material which he may have gathered, and a statement of any findings of fact which he may have determined. The preliminary investigation shall cease forthwith and the aforementioned material shall become a part of the Marine Board of Investigation's record.

SUBPART 136.09—MARINE BOARD OF INVESTIGATION

§ 136.09-1 *Commandant to designate.* If as a result of an investigation of any casualty, upon recommendation of a District Commander or upon receipt of information from any other source, it appears to the Commandant that a marine casualty or accident is a major casualty (See § 136.03-5) and that further investigation thereof would tend to promote safety of life and property at sea and would be in the public interest, the Commandant will designate an appropriate Marine Board of Investigation to conduct such investigation forthwith.

§ 136.09-5 *Powers of Marine Board of Investigation.* Any Marine Board of Investigation so designated shall have the power to administer oaths, summon witnesses, require persons having knowledge of the subject matter of the investigation to answer questionnaires, and to require the production of relevant books, papers, documents or any other evidence. Attendance of witnesses or the production of books, papers, documents or any other evidence shall be compelled by a similar process as in the United States District Court. The chairman shall administer all necessary oaths to any witnesses summoned before said Board.

§ 136.09-10 *Witnesses, payment of.* Any witness subpoenaed under § 136.09-5 shall be paid such fees for his travel and attendance as shall be certified by the chairman of a Marine Board of Investigation or an investigating officer, in accordance with § 136.11-10.

§ 136.09-15 *Time and place of investigation, notice of rights of witnesses, etc.* Reasonable notice of the time and place of the investigation shall be given to any person whose conduct is or may be under investigation and to any other party in interest. All parties in interest shall be allowed to be represented by counsel, to cross-examine witnesses, and to call witnesses in their own behalf.

§ 136.09-20 *Record of proceedings.* The testimony of witnesses shall be transcribed and a complete record of the proceedings of a Marine Board of Investigation shall be kept. At the conclusion of the investigation a written report shall be made containing findings of fact, opinions, and recommendations to the Commandant for his consideration.

§ 136.09-25 *U. S. Attorney to be notified.* The recorder of a Marine Board of Investigation shall notify the United States Attorney for the District in which the Marine Board of Investigation is being conducted of the nature of the casualty under investigation and time and place the investigation will be made.

§ 136.09-30 *Action on report.* Upon approval of the report of a Marine Board of Investigation the Commandant will require to be placed into effect such recommendations as he may deem necessary for the better improvement and safety of life and property at sea.

§ 136.09-35 *Preferment of charges.* If, as a result of a Marine Board of Investigation of a major marine casualty, there appears probable cause for the preferment of charges against any licensed or certificated personnel, the recorder of the Board or other designated investigating officer, without waiting for the approval of the report by the Commandant, shall prepare such charges and specifications and proceed in accordance with § 137.05-10 of this subchapter either during or immediately following the investigation, and before the witnesses have dispersed. Such action shall be independent and apart from any other action which may later be ordered by the Commandant or taken by other authorities. In all cases the record of the Marine Board of Investigation shall state whether or not action until Title 46 U. S. Code, section 239 (R. S. 4450), has been or will be instituted and the names of the persons charged, if any, shall be included.

SUBPART 136.11—WITNESSES AND WITNESS FEES

§ 136.11-1 *Employees of vessels controlled by Army or Navy as witnesses.* No officer, seaman, or other employee of any public vessel controlled by the Army or Navy (not including the Coast Guard) of the United States, shall be summoned or otherwise required to appear as a witness in connection with any investigation or other proceeding without the consent of the government agency concerned.

§ 136.11-5 *Coercion of witnesses.* Any attempt to coerce any witness or to induce him to testify falsely in connection with a shipping casualty, or to induce any witness to leave the jurisdiction of the United States, is punishable by a fine of \$5,000.00 or imprisonment for one year, or both such fine and imprisonment.

§ 136.11-10 *Witness fees, subsistence, and mileage.* (a) Duly subpoenaed witnesses, other than government witnesses, in any investigation or other proceeding may apply for payment for their services as witnesses. Upon the submission of

such a request for payment (Standard Form No. 1034) the chairman of a Marine Board of Investigation or the investigating officer will forward the request to the authorized Coast Guard certifying officer together with a statement that:

(1) The witness seeking payment was duly subpoenaed as a witness by the Coast Guard.

(2) The witness appeared pursuant to such subpoena; and

(3) The witness is entitled to the witness fees, and/or subsistence, and/or mileage claimed.

(b) Upon receipt of such claim with supporting statement, the authorized Coast certifying officer may certify the voucher (Standard Form No. 1034) according to the following scale and submit it to the appropriate Coast Guard assistant disbursing officer for payment:

(1) A fee of \$2.00 for each day or fraction thereof of actual attendance.

(2) A subsistence allowance of \$3.00 for each day or fraction thereof if the witness resides at a distance so far removed from the place at which the investigation or other proceeding was held as to prohibit his returning to his place of residence each day. *Provided*, That the witness was required to remain at the place at which the investigation or other proceeding was held for more than one day. *Provided further* That in the case of employed merchant marine personnel their place of residence will be construed to be the vessel upon which they are employed, and in the case of unemployed merchant marine personnel their place of residence will be construed to be their actual place of residence when ashore, rather than the residence of their next of kin. In cases where subsistence allowance is payable, additional subsistence allowance of \$3.00 per day may be paid for each day necessarily occupied in traveling from the place of residence to attend the investigation or other proceeding hereunder and return to such residence or place. No subsistence allowance for travel time shall be paid if witness is already present at place of investigation or other proceeding hereunder.

(3) Travel money at the rate of five cents per mile, not to exceed 100 miles, for actual travel from place of residence or place where subpoena was served to place at which the investigation or other proceeding was held. Travel money at the rate of five cents per mile not to exceed 100 miles is also allowed for the actual travel involved in return of witness to his place of residence, or if the subpoena was served at a place other than the witness' place of residence, to the place where said subpoena was served. All payments of travel money shall be computed on the basis of mileage by the shortest route.

SUBPART 136.12—TESTIMONY BY INTERROGATORIES AND DEPOSITIONS

§ 136.12-1 *Application, procedure, and admissibility.* (a) Witnesses shall be examined orally, except that for good cause shown, testimony may be taken by deposition upon application of any party in interest or upon the initiative of the

investigating officer or Marine Board of Investigation.

(b) Applications to take depositions shall be in writing setting forth the reasons why such deposition should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition. Such application shall be made to an investigating officer or the Marine Board of Investigation prior to or during the course of the proceedings.

(c) The investigating officer or Marine Board of Investigation, shall, upon receipt of the application, if good cause is shown, make and serve upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time and place of the taking of such deposition and shall contain a designation of the officer before whom the witness is to testify. Such deposition may be taken before any officer authorized to administer oaths by the laws of the United States.

(d) The party desiring the deposition may submit a list of interrogatories to be propounded to the absent witness; then the opposite party after he has been allowed a reasonable time for this purpose, may submit a list of cross-interrogatories. If either party objects to any question of the adversary party, the matter shall be presented to the investigating officer or Marine Board of Investigation for a ruling. Upon agreement of the parties on a list of interrogatories and cross-interrogatories (if any) the investigating officer or Marine Board of Investigation may propound such additional questions as may be necessary to clarify the testimony given by the witness.

(e) The subpoena referred to in § 137.09-5 (b) of this subchapter together with the list of interrogatories and cross-interrogatories (if any) shall be forwarded to the officer designated to take such deposition. This officer will cause the subpoena to be served personally on the witness. After service the subpoena shall be endorsed and returned to the investigating officer or Marine Board of Investigation.

(f) When the deposition has been duly executed it shall be returned to the investigating officer or Marine Board of Investigation. As soon as practicable after the receipt of the deposition the investigating officer or Marine Board of Investigation shall present it to the parties for their examination. The investigating officer or Marine Board of Investigation shall rule on the admissibility of the deposition or any part thereof and of any objection offered by either party thereto.

SUBPART 136.13—DISCLOSURE OF RECORDS

§ 136.13-1 *Records of investigations.* (a) Records of investigations conducted by investigating officers pursuant to the provisions of this part after action thereon by the District Commander will be made available to persons properly and directly concerned, on request to the District Commander. If extra copies of the records are readily available, they may be furnished to parties in interest. If sufficient copies are not available, extra

copies may be made at the expense of the persons requesting such copies of records.

(b) The records of investigations of marine casualties made by investigating officers which will be made available to persons properly and directly concerned shall include notice of casualty or accident, statements and/or testimony of witnesses, exhibits and any other evidentiary material presented in the investigations and the findings of fact as determined by the investigating officer, but shall not include the opinions, conclusions and recommendations of such officers.

(c) The reports of a Marine Board of Investigation shall be made to the Commandant. Upon receipt of the record of investigation made by a Marine Board of Investigation, it may be made available to parties in interest except that the findings of fact, conclusions, opinions and recommendations of such a Board shall not become public and made available until they have been approved or final action thereon has been taken by the Commandant.

(d) Records of a Marine Board of Investigation shall include testimony and/or statements of witnesses, exhibits, records of investigation made by an investigating officer and any other evidentiary material used by the Board in arriving at its determination.

§ 136.13-5 *Records held confidential.* Except as specifically set forth in § 136.13-1, all files, records, testimony, documents, reports, or other data pertaining to the internal management of the Marine Board of Investigation or to the investigation or disposition of charges or petitions during the nonpublic investigative stages of the investigation and before the institution of a Marine Board of Investigation and all matters of evidence obtained by the Board in the course of investigation which have not been offered in evidence during the investigation or have not been made part of the official record by stipulation, whether in Coast Guard Headquarters or other offices, are administrative records and are not available to public inspection unless expressly approved by the Commandant.

§ 136.13-10 *Production upon subpoena.* Where request for information or material are denied for any reason, the applicant shall be advised that the document or material will be produced upon service of a subpoena duces tecum from a court of competent jurisdiction, provided such material is not affected by consideration requiring secrecy in the public interest.

SUBPART 136.15—PERSONS IN SERVICE OF COAST GUARD

§ 136.15-1 *Persons in service of Coast Guard.* (a) No person in the service of the Coast Guard shall, without prior approval of the Commandant, give any testimony with respect to any investigation or any other official proceedings in any suit or action in the courts.

(b) An affidavit by the litigant or his attorney setting forth the interest of the litigant and the information with respect to which the testimony of such officer or employee is desired, must be sub-

mitted before permission to testify will be granted. Permission to testify will, in all cases, be limited to the information set forth in the affidavit, or to such portions thereof as may be deemed proper.

SUBPART 136.19—CONSTRUCTION OF REGULATIONS AND RULES OF EVIDENCE

§ 136.19-1 *Construction of rules.* The regulations in this part shall be liberally construed to insure just, speedy, and inexpensive determination of the issues presented.

§ 136.19-5 *Adherence to rules of evidence.* As hearings under this part are administrative in character, strict adherence to the formal rules of evidence is not imperative. However, in the interest of orderly presentation of the facts of a case, the rules of evidence should be observed as closely as possible.

SUBPART 136.21—COMPUTATION OF TIME

§ 136.21-1 *Computation of time.* The time, within which any act, provided by the regulation in this subchapter, or an order of the Marine Board of Investigation is to be done, shall be computed by excluding the first day and including the last unless the last day is Sunday or a legal holiday, in which case the time shall extend to and include the next succeeding day that is not a Sunday or legal holiday. *Provided, however* That where the time fixed by the regulations in this subchapter or an order of the Board is five days or less all intervening Sundays or legal holidays, other than Saturdays, shall be excluded.

SUBPART 136.23—EVIDENCE OF CRIMINAL LIABILITY

§ 136.23-1 *Evidence of criminal liability.* If as a result of any investigation or other proceeding conducted hereunder, evidence of criminal liability on the part of any licensed officer or certificated person or any other person is found, such evidence shall be referred to the U. S. Attorney General.

PART 137—SUSPENSION AND REVOCATION PROCEEDINGS

The regulations in Part 137 which were suspended by the Commandant, U. S. Coast Guard, on August 26, 1942 (7 F. R. 6778, 46 CFR, Cum. Supp., Part 137, note) are canceled and the following regulations are prescribed which shall be effective 31 days after date of publication of this document in the FEDERAL REGISTER:

SUBPART 137.01—AUTHORITY AND SCOPE OF REGULATIONS

Sec.	
137.01-1	Authority.
137.01-5	Disciplinary proceedings.

SUBPART 137.05—INVESTIGATING OFFICERS AND INVESTIGATIONS

137.05-1	Designations.
137.05-5	Investigating procedures.
137.05-7	Voluntary surrender of licenses and certificates to avoid hearings.
137.05-10	Instituting proceedings.
137.05-15	Service of charges specifications, etc.

SUBPART 137.07—EXAMINERS

Sec.	
137.07-1	Designations.
137.07-5	Responsibilities.

SUBPART 137.09—HEARINGS

137.09-1	Procedures for conduct of hearings.
137.09-5	General.
137.09-10	Examiner's opening statement.
137.09-15	Production of documents.
137.09-20	Advising person charged of right to counsel, witnesses, etc.
137.09-25	Appearances.
137.09-30	Removal of witnesses from hearing room.
137.09-35	Arraignment and plea.
137.09-40	Opening statement of investigating officer.
137.09-45	Opening statement by or on behalf of person charged.
137.09-50	Witnesses.
137.09-52	Testimony by interrogatories and depositions.
137.09-55	Argument.
137.09-60	Submission of briefs, proposed findings and conclusions.
137.09-65	Findings.
137.09-70	Prior record.
137.09-75	Decision.
137.09-80	Service of original findings and order.
137.09-85	Notification of right to appeal.
137.09-90	Declaration that hearing is closed.

SUBPART 137.11—APPEALS

137.11-1.	Time for filing, contents, etc.
137.11-5	Record for decision on appeal.
137.11-10	Action on appeal.
137.11-15	Temporary documents.

SUBPART 137.13—WITNESSES AND WITNESS FEES

137.13-1	Witnesses and witness fees.
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SUBPART 173.15—EVIDENCE OF CRIMINAL LIABILITY

137.15-1	Referral to Attorney General.
137.15-5	Use of judgments of convictions.

SUBPART 137.17—DISCLOSURE OF RECORDS

137.17-1	Statements of witnesses and exhibits.
137.17-5	Final opinions and orders.
137.17-10	Records held confidential.
137.17-15	Transcripts of disciplinary records.
137.17-20	Production upon subpoena.
137.17-25	Testimony by Coast Guard personnel.

SUBPART 137.21—CONSTRUCTION OF REGULATIONS AND RULES OF EVIDENCE

137.21-1	Construction of regulations.
127.21-5	Adherence to rules of evidence.

AUTHORITY: §§ 137.01-1 to 137.21-5, inclusive, issued under R. S. 4450, as amended, 49 Stat. 1544, sec. 5 (e), 55 Stat. 244, and Public Law 404, 79th Cong., 60 Stat. 237, 5 U. S. C. Supp., 1001 et seq., 46 U. S. C. 239, 367, 50 U. S. C. 1275, and sec. 101, Reorganization Plan No. 3 of 1946, 11 F. R. 7875.

SUBPART 137.01—AUTHORITY AND SCOPE OF REGULATIONS

§ 137.01-1 *Authority.* The regulations in this part are issued in accordance with the authority in Title 46 U. S. Code section 239 (R. S. 4450) and Public Law 404, 79th Cong. (60 Stat. 237, 5 U. S. C. 1001 et seq.)

§ 137.01-5 *Disciplinary proceedings.* Suspension or revocation proceedings shall be instituted by an investigating officer in any case in which it appears, as a result of any investigation made under Part 136 of this subchapter, or otherwise, that there are reasonable grounds to believe that a licensed or staff officer or holder of a certificate of

service is incompetent or has been guilty of misbehavior, negligence, or unskillfulness or has endangered life or has wilfully violated any of the provisions of Title 46 U. S. Code sections 170, 214, 215, 222, 224, 224a, 226, 228-234, 239, 240, 361, 362, 364, 367, 371-373, 375-382, 384, 385, 391, 391a, 392, 393, 399, 400, 402-416, 435-440, 451-452, 460-463, 464, 467, 470-481, 482, 489-498, or Title 50 U. S. Code section 1275, or any of the regulations issued thereunder.

SUBPART 137.05—INVESTIGATING OFFICERS AND INVESTIGATIONS

§ 137.05-1 *Designations.* An investigating officer is designated in writing by the District Commander in domestic units and by the Commandant in foreign ports.

§ 137.05-5 *Investigating procedures.* (a) The investigating officer shall investigate marine casualties and inquire into complaints of misconduct, incompetence, unskillfulness, negligence, endangering of life, or wilful violation of law, which if substantiated could serve as the basis for charges under Title 46 U. S. Code section 239 against any person who is serving under a license or certificate of service issued by the Coast Guard, or issued by any predecessor authority. Upon the completion of such investigation or inquiry the investigating officer has five alternative courses:

(1) If he finds that there is no basis for the complaint; that there is no jurisdiction; that the case is of trivial importance; that there is no reasonable expectation of obtaining necessary witnesses, or that the accused is not or probably will not be available, he may take no action and recommend closing the case.

(2) If he finds there is basis for the complaint but the violation is not of a serious character, or that it is of a serious character but with extenuating circumstances, or where the ends of justice will be best served, or where the exigencies of the situation are such that formal proceedings would be impracticable, he may orally admonish the person and shall subsequently advise him of the facts or conduct found to be the basis for the complaint and which will be made a matter of record.

(3) If the investigating officer finds adequate basis for a complaint and the person under investigation, or witnesses are not then available, the case may be referred to the Commandant or to any other port or district for completion of action.

(4) If the investigating officer finds evidence of physical incompetence he may accept voluntary surrender of a license or certificate until such time as the person concerned produces a certificate of medical fitness from the United States Public Health Service or other competent medical authority.

(5) If the investigating officer finds reasonable ground to believe that a licensed or certificated person is incompetent or has committed some act or failed to perform some duty which would be the basis for revocation or suspension of a license or certificate, he may prefer charges.

(b) In the conduct of an investigation, the investigating officer shall have the power to administer oaths, subpoena witnesses, require persons having knowledge of the subject matter of the investigation to answer questionnaires, and require the production of relevant books, papers, documents, licenses, certificates, or other records. The investigating officer conducting such investigation shall, where the licensed officer or certificated man whose conduct is being investigated is available, advise such person informally of the substance of the complaint against him and afford him an opportunity at that time to make such comment in refutation of such complaint as he may desire.

(c) Having concluded that there is reasonable ground to believe that there is basis for action, the investigating officer shall institute an appropriate proceeding against the license(s) and/or certificate(s) and present the evidence acquired to an examiner.

§ 137.05-7 Voluntary surrender of licenses and certificates to avoid hearing.

(a) Except as provided in § 137.05-5, any person whose conduct is under investigation or who has been served with charges and specifications may voluntarily surrender to the investigating officer his licenses and/or certificates in preference to appearing at a hearing under Title 46 U. S. Code section 239 to answer charges against him.

(b) In such cases the person surrendering the licenses or certificates shall sign a statement containing the following stipulations:

(1) That the licenses or certificates are voluntarily surrendered in preference to appearing at a hearing to answer charges against him;

(2) That all title to such documents is permanently relinquished; and,

(3) That the right to a hearing, appeal, and judicial review are waived.

§ 137.05-10 Instituting proceedings.

(a) To institute such proceedings the investigating officer shall prepare charges and specifications and serve the same upon the holder of the license(s) and/or certificate(s) involved, and at the same time he shall furnish the appropriate examiner with a copy of such charges and specifications and transmit the case for hearing by the examiner. The examiner shall fix the time and place of the hearing and furnish information thereof to the investigating officer who shall summon the person charged, subpoena witnesses, and otherwise prosecute the case.

(b) A charge is a designation of an offense in general terms. The offense must be one within the purview of Title 46 U. S. Code section 239 and of the regulations promulgated thereunder. It is permissible to prefer as many charges as may be necessary to provide for every possible contingency in the evidence. Under no circumstances does a charge constitute evidence of guilt, nor may any inference of guilt be drawn from the fact that licensed or certificated personnel have been charged. A specification sets forth the facts which form the basis of the charge and any charge may be supported by one or more specifications. Its purpose is to enable the person

charged to identify the offense so that he will be in a position to prepare his defense. The specification shall state:

- (1) Legal authority and jurisdiction;
- (2) Time and place of offense;
- (3) Ultimate facts; and,
- (4) Only one offense in any one specification.

§ 137.05-15 Service of charges, specifications, etc. A notice of the time and place of hearing and a copy of the charges and specifications shall be served upon the person charged either by personal service or by registered mail with return receipt required, sufficiently in advance of the time set to give such person a reasonable opportunity to prepare his defense. When personal service is made upon the person charged, the officer or employee making service shall exhibit the original of the notice to the person charged, read it to such person if he cannot read, and give him a copy thereof and of the charges and specifications. The person charged will be advised by the investigating officer at the time he is issued Notice of Hearing (Form CG 2639) that he has a right to have counsel represent him at the hearing, and that "counsel" may be a lawyer or any other person the accused desires to represent him. The person charged will be apprised of the nature of the proceedings and the possible penalties applicable and be afforded an opportunity of having witnesses subpoenaed to testify in his behalf.

SUBPART 137.07—EXAMINERS

§ 137.07-1 Designations. The examiners are designated in writing by the Commandant to conduct hearings necessary in the adjudication of disciplinary cases arising under Title 46 U. S. Code section 239 and are under the administrative control of that officer.

§ 137.07-5 Responsibilities. (a) The examiners are responsible for the conduct of hearings and shall observe all rules and regulations promulgated by the Commandant. The examiners shall render their decisions without undue delay after all evidence is in and after the parties have been afforded a reasonable opportunity to submit proposed findings and conclusions.

(b) The examiners shall be responsible for the preparation and forwarding of reports of hearings and the administrative work relating thereto, and shall have access to facilities and temporary use of personnel at such times and places as are needed in the prompt dispatch of official business.

(c) The examiners shall perform no duties inconsistent with or which will interfere with their duties and responsibilities as examiners. Any additional duties for examiners shall be assigned by the Commandant, or pursuant to instructions issued by the Commandant, to the District Commander.

(d) Save to the extent as required for the disposition of ex parte matters as provided by law, an examiner is prohibited from consulting with anyone concerning "any fact in issue," unless after notice, all parties are permitted to participate. If, as the hearing develops, the examiner realizes that the evidence

adduced must be analyzed by experts, he may request the holder of the license or certificate involved, or the investigating officer, to produce the necessary experts to give their views as witnesses. He may not informally obtain advice or opinions from the parties or their counsel or from any officer or employee of the Coast Guard as to the facts or the weight or the interpretation to be given to the evidence. The examiner may, however, informally obtain advice on matters of law or agency policy from officers or employees of the Coast Guard who were not "engaged in the performance of investigative or prosecuting functions" in that or a factually related case. This limitation does not apply to the Commandant, and the examiner may at any time consult with and obtain instructions from him on questions of law and policy.

SUBPART 137.09—HEARINGS

§ 137.09-1 Procedures for conduct of hearings. The procedures outlined in this subpart shall be followed in the conduct of hearings.

§ 137.09-5 General. (a) The examiner shall open the hearing at the time and place specified in the notice, administer all necessary oaths, cause a complete record of the proceedings to be kept, regulate and conduct the hearing in such a manner as to bring out all the relevant and material facts, and insure the accused a fair and impartial hearing on the charges made against him. The investigating officer shall aid in the orderly presentation of evidence and may examine and cross-examine witnesses and introduce documentary evidence into the record. The person charged shall have the right to have counsel present at the hearing and shall be permitted to call, examine and cross-examine witnesses and to introduce relevant documentary evidence into the record. Should the person charged desire counsel and has no means of obtaining one, the examiner will secure an officer, if one is available, to act in his defense. Any witness may, if he so desires, have personal counsel present during the time he is being examined to advise him as to his rights, privileges, and immunities under the Constitution, but such counsel may not otherwise participate in the hearing.

(b) The examiner shall have authority either on his own motion or upon the request of the parties to issue subpoenas summoning witnesses or requiring the production of any relevant books, papers, documents, or other evidence. Applications for subpoenas may be filed with the examiner in writing by any party prior to or during the hearing. Such applications shall be timely, and specify the name of the witness and show the general relevance and reasonable scope of the evidence sought, and, if calling for documents, shall specify the same with such particularity as will enable them to be identified for purpose of production.

(c) The examiner may, at the outset of the hearing, during its progress, or at its conclusion, either on his own motion or on the motion of the investigating officer, cause or permit the amendment

of the charges and specifications to correct clerical errors or errors of form.

(d) The examiner may, for good cause shown, either on his own motion or on the motion of the investigating officer or person charged, continue the hearing from day to day or adjourn such hearing to a later date or to a different place by announcement at the hearing or by other appropriate notice. In making such determination, consistent with the rights of the person charged to a fair and impartial hearing, the examiner shall give careful consideration to the future availability of witnesses and to the prompt dispatch of the vessel(s).

(e) In any disciplinary proceeding conducted under this part, the examiner may withdraw from the case when he deems himself disqualified. In such event he shall immediately notify the Commandant of his withdrawal and his reasons therefor. Any party may, in good faith, request the examiner to withdraw on the grounds of personal bias or other disqualification. The party seeking disqualification shall file with the examiner a timely affidavit setting forth in detail the facts alleged to constitute grounds for disqualification and the examiner may file a response thereto. If the examiner believes himself not disqualified he shall so rule and proceed with the hearing. If the party seeking disqualification excepts to the ruling of the examiner, such exception and evidence relating to the claim of disqualification shall be presented to the examiner. All matters relating to such claims of disqualification shall affirmatively appear in, and form part of the record.

(f) In any case in which the person charged, after having been duly served with notice of a hearing fails to appear, a notation to that effect shall be made in the record and the hearing shall proceed. The examiner shall cause to be placed in the record all facts concerning the issuance and service of summons, setting the manner, date and place of service. In "in absentia" proceedings it is not necessary to introduce formally into the record all evidence bearing on the guilt of the person charged. However, it is necessary that prima facie evidence of guilt be established.

(g) The examiner may take official notice of facts at any stage in a proceeding, but the matters thus noticed shall be announced in open hearing and either party shall be afforded an opportunity to show the contrary, which shall also be recorded.

§ 137.09-10 *Examiner's opening statement.* The examiner shall open the hearing by announcing the statutory jurisdiction and by informing the person charged that the proceedings are not directed against his person or property but are solely concerned with his right to hold a license or certificate or indorsement thereon issued by the Coast Guard, or issued by any predecessor authority.

§ 137.09-15 *Production of documents.* The examiner shall require the person charged to produce all currently valid licenses or certificates issued to him by the Coast Guard or issued by any predecessor authority, and in the event the person charged alleges that he has lost

any such license or certificate, the examiner will require the execution of a lost document affidavit (Form CG-719-E). The person charged shall be warned that the misstatement of any material item in such affidavit is punishable as a violation of a federal criminal statute.

§ 137.09-20 *Advising person charged of right to counsel, witnesses, etc.* The examiner shall advise the person charged of his right to be represented by counsel and inquire of the investigating officer whether the person charged has been afforded the right to have witnesses subpoenaed to testify in his behalf. The examiner shall also advise the person charged of his right to cross-examine witnesses testifying against him. All matters set out herein shall affirmatively appear in the record.

§ 137.09-25 *Appearances.* The appearances of persons at the hearing shall be entered in the following order:

- (a) The investigating officer;
- (b) The person charged;
- (c) Counsel for the person charged, if any and,

(d) Witnesses' personal counsel who may in the course of the hearing advise such witnesses of their constitutional rights, privileges and immunities, but who will not be allowed to examine or cross-examine the person charged or other witnesses or otherwise participate in the hearing.

§ 137.09-30 *Removal of witnesses from hearing room.* All witnesses shall be excluded from the hearing room prior to the taking of their testimony and the examiner may segregate Government witnesses if he deems it desirable.

§ 137.09-35 *Arraignment and plea.* The examiner shall read the charge and specification to the person charged and shall obtain a definite plea to each and every specification. If the person charged is unwilling or unable to make a definite plea the examiner shall enter a plea of "not guilty" and if the person charged fails to appear at the hearing after due and sufficient notice a plea of "not guilty" shall likewise be entered in his behalf by the examiner.

§ 137.09-40 *Opening statement of investigating officer.* After arraignment and plea, the investigating officer shall make a brief statement outlining the basis for the preferment of the charge and all particulars incident to the substance of the complaint; notification to the accused of right to counsel; notification to accused of right to have witnesses subpoenaed; particulars incident to the service of original charge and specification; and the nature of the proceedings. The statement shall also contain a summary of the investigation made when a plea of "guilty" is entered, and a summary of matters expected to be proved by testimony, when a plea of "not guilty" is entered.

§ 137.09-45 *Opening statement by or on behalf of person charged.* The person charged or his counsel shall be afforded an opportunity of stating to the examiner what he intends to establish by his evidence. This may be waived or deferred at the option of the person

charged or his counsel. Where the person charged has entered a plea of "guilty" he or his counsel may present to the examiner any and all mitigating circumstances believed material. Should this presentation be inconsistent with a "guilty" plea the examiner shall reject the plea and shall enter a plea of "not guilty" in lieu thereof.

§ 137.09-50 *Witnesses.* (a) The investigating officer has the burden of proof and therefore presents his witnesses first. All witnesses shall be sworn, duly examined, and may be cross-examined. They may be questioned by the examiner. The investigating officer shall begin his direct examination by properly identifying the witnesses. The witness shall be required to identify the person charged. The examiner may order withdrawn improper questions by the investigating officer or by the person charged or his counsel even though not objected to by the adversary party, in order that improper evidence may not be introduced into the record. Either party shall have the right to recall for re-examination or cross-examination a witness who has previously testified. Upon conclusion of cross-examination by the parties, the parties may question the witness further on re-direct examination and the parties shall have the right of re-cross examination. The examiner may at any time ask any question of a witness which he believes will tend to clarify the issue before the hearing.

(b) In cases where a guilty plea has been entered the investigating officer may call witnesses to establish matters of aggravation and likewise the person charged or his counsel may call witnesses to establish matters in mitigation. An investigating officer shall not call witnesses when a guilty plea is entered unless he feels that the conduct of the person charged cannot be adequately presented without the testimony of such witnesses.

§ 137.09-52 *Testimony by interrogatories and depositions.* (a) Witnesses shall be examined orally, except that for good cause shown, testimony may be taken by deposition upon application of any party in interest or upon the initiative of the examiner.

(b) Applications to take depositions shall be in writing setting forth the reasons why such deposition should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition. Such application shall be made to an examiner prior to or during the course of the hearing.

(c) The examiner, shall, upon receipt of the application, if good cause is shown, make and serve upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time and place of the taking of such deposition and shall contain a designation of the officer before whom the witness is to testify. Such deposition may be taken before any officer authorized to administer oaths by the laws of the United States.

(d) The party desiring the deposition may submit a list of interrogatories to be

propounded to the absent witness; then the opposite party after he has been allowed a reasonable time for this purpose, may submit a list of cross-interrogatories. If either party objects to any question of the adversary party, the matter shall be presented to the examiner for a ruling. Upon agreement of the parties on a list of interrogatories and cross-interrogatories (if any) the examiner may propound such additional questions as may be necessary to clarify the testimony given by the witness.

(e) The subpoena referred to in § 137.09-5 (b) together with the list of interrogatories and cross-interrogatories (if any) shall be forwarded to the officer designated to take such deposition. This officer will cause the subpoena to be served personally on the witness, and the subpoena after service shall be endorsed and returned to the examiner.

(f) When the deposition has been duly executed it shall be returned to the examiner who then becomes the official custodian thereof. As soon as practicable after the receipt of the deposition the examiner shall present it to the parties for their examination. The examiner shall rule on the admissibility of the deposition or any part thereof and of any objection offered by either party thereto.

§ 137.09-55 *Argument.* (a) Both the investigating officer and the person charged or his counsel may present argument in the following order:

(1) Opening argument by the investigating officer;

(2) Argument by the person charged or his counsel; and

(3) Closing argument by the investigating officer.

(b) The examiner may limit the amount of time to be allotted to the investigating officer and the person charged or his counsel.

§ 137.09-60 *Submission of briefs, proposed findings and conclusions.* (a) Prior to a decision the examiner shall afford both parties reasonable opportunity to submit, either orally or in writing, proposed findings and conclusions together with supporting reasons therefor. The record shall show the ruling of the examiner upon each such proposed finding and conclusion presented. The examiner shall fix the time within which the parties shall file such proposed findings and conclusions. Failure to comply within the time so fixed by the examiner shall be regarded as a waiver of the right.

(b) Pending decision by the examiner on the proposed findings and conclusions, the licenses or certificates produced at the outset of the hearing shall remain in the custody of the examiner.

§ 137.09-65 *Findings.* A separate finding shall be made by the examiner on each charge and specification; such findings shall be based on the evidence adduced at the hearing and after rulings have been made upon each proposed finding and conclusion submitted. Specifications may alternatively be found "not proved," "proved in part," or "proved." In the event of a guilty plea the finding shall be specification "proved by plea." If any specification

under a charge is found proved or proved in part in substantiation of the charge, the charge must be found proved. The charge may alternatively be proved or dismissed. All decisions of the examiner shall become part of the record and include a statement of findings and conclusions as well as the reasons or basis therefor, upon all material issues of fact, law or discretion presented on the record, and the appropriate order.

§ 137.09-70 *Prior record.* The prior record of the person charged shall not be revealed to the examiner until at least one charge has been found proved. After announcing such a finding the examiner shall ascertain from the investigating officer if the person charged has any previous commendatory or disciplinary record. If the prior record is not readily available, the person charged may be questioned under oath as to his prior record.

§ 137.09-75 *Decision.* (a) After considering all of the evidence, arguments, briefs, proposed findings, proposed conclusions and the prior record (if any) of the person charged, the examiner shall make and announce his decision. If no charge is found proved in the findings, the decision shall state that the charge or charges are dismissed.

(b) If any charge is found proved the decision of an examiner in a domestic port shall clearly state that the license or certificate of the person charged is:

(1) Revoked; or,

(2) Suspended for a specified period from a specific date; or,

(3) Suspended for a specific period but not from a specified date, subject to a specified period of probation running from a specified date.

(c) The order of an examiner in a foreign port shall clearly state that the license or certificate of the person charged is:

(1) Revoked; or,

(2) Suspended for a period beginning with date of first arrival in continental United States and ending after a specified date on which report of arrival is made to the Coast Guard; or,

(3) Suspended for a specific period but not from a specified date, subject to a specified period of probation running from a specified date.

(d) Any examiner may, if the circumstances of a particular case admit, admonish the person charged and advise him that such admonition will be made a matter of his official record.

(e) In the absence of an appeal as provided in Subpart 137.11, the decision of the examiner shall be final and binding on the person charged for all purposes.

(f) No person whose license or certificate has been revoked, or is under suspension, or is being proceeded against shall be issued any other license or certificate except upon approval of the Commandant. However, when an examiner decides that the person charged is incompetent in the grade of license or certificate he holds, but would be competent in a lower grade, he may revoke the license or certificate and, without requiring a formal examination, may provide for the issuance of another license or

certificate of a grade for which the person charged would be competent.

§ 137.09-89 *Service of original findings and order.* The examiner shall prepare in writing his findings and decision in triplicate and deliver the original thereof to the person charged at the time he announces the order. Should the hearing result in a probationary suspension or dismissal of charges the license(s) or certificate(s) shall be returned to the person charged and a notation to that effect made in the record.

§ 137.09-85 *Notification of right to appeal.* The person charged shall be fully advised by the examiner of his right to appeal in accordance with the regulations in Subpart 137.11. The examiner shall also advise the person charged that if such appeal is not taken within the time limits specified in Subpart 137.11 it will not be thereafter permitted.

§ 137.09-90 *Declaration that hearing is closed.* Upon completion of the procedure outlined in this subpart, and where any person against whom charges have been proved has been informed of his right to appeal, the hearing shall be declared closed by the examiner.

SUBPART 137.11—APPEALS

§ 137.11-1 *Time for filing, contents, etc.* (a) A person whose license or certificate is revoked, suspended, suspended on probation or admonished by an examiner in a Coast Guard District may any time within 30 days after the decision of the examiner take an appeal to the Commandant. This appeal to the Commandant shall be taken by filing a notice of appeal with the District Commander of the district in which the hearing was held.

(b) A person whose license or certificate is revoked, suspended, suspended on probation or admonished by an examiner in a foreign port may, within thirty days after the date of his arrival in the continental United States or thirty days after the date of the decision, whichever is later, take an appeal to the Commandant. This appeal to the Commandant shall be taken by filing a notice of appeal with the Commandant or the District Commander of the district in which the person first arrived in the continental United States.

(c) The notice may be prepared by the appellant or appellant's counsel. The notice shall:

(1) Be typewritten or written in a legible hand; and,

(2) Be addressed to the Commandant; and,

(3) Set forth as briefly as possible the name of the appellant, the nature of the charge, the substance of the decision of the examiner, the name of the examiner who made the decision; and,

(4) Contain a statement of each separate ground for such appeal, together with a certificate from the appellant that the appeal is not taken for the purposes of delay.

(d) The appellant may file exceptions to the decision of the examiner supported by a brief or memorandum with his notice of appeal in elaboration of the matters set forth. The District Commander

shall immediately transmit such notice of appeal, exceptions, brief or memorandum, if any, to the Commandant together with a complete transcript of the record in the case, if in his possession.

§ 137.11-5 *Record for decision on appeal.* The transcript of testimony together with all papers and exhibits filed in the proceedings shall constitute the exclusive record for decision on appeal.

§ 137.11-10 *Action on appeal.* The Commandant on appeal may alter or modify any finding of the examiner and may affirm, reverse or modify the order of the examiner, or he may remand the case for further hearing, but the Commandant will not consider evidence which is not a part of the record. The decision of the Commandant on appeal shall be final.

§ 137.11-15 *Temporary documents.* Any person intending to appeal from the decision of the examiner to the Commandant may file with the examiner who rendered the decision or the Commander of the Coast Guard district in which the hearing was held a written request for a temporary license or certificate of the same type and character as that suspended or revoked by his decision. If this request is filed with the District Commander he shall immediately transmit such request to the examiner who heard the case in the event the case has not been forwarded to the Commandant, otherwise the request shall be forwarded to the Commandant. Except in the case of wilfulness, or that in which public health, interest, or safety requires otherwise, the examiner or the Commandant may issue a temporary license or certificate of the same character and legal effect as that suspended or revoked but subject to such terms and conditions as he may prescribe except that it shall be effective for a definite period of time, which may be extended from time to time, or until the final determination of the appeal is made. The request for a temporary license or certificate and the action of the examiner or the Commandant on the request shall be a part of the record.

SUBPART 137.13—WITNESSES AND WITNESS FEES

§ 137.13-1 *Witnesses and witness fees.* The regulations regarding witnesses and witness fees are set forth in Subpart 136.11 of this subchapter.

SUBPART 137.15—EVIDENCE OF CRIMINAL LIABILITY

§ 137.15-1 *Referral to Attorney General.* (a) If as a result of any investigation or other proceeding conducted hereunder, evidence of criminal liability on the part of any licensed officer or holder of certificate of service or any other person is found, such evidence shall be referred to the Attorney General.

(b) Investigating officers shall determine whether proceedings under Title 46 U. S. Code section 239 should be instituted or concluded before criminal action is initiated or completed or whether action should be deferred pending outcome of the criminal action in Federal or State

courts. One controlling factor will be whether the witnesses will be available if the hearing is delayed.

§ 137.15-5 *Use of judgments of conviction.* (a) The judgment of conviction by a Federal court is res judicata of the issues decided by that judgment. Where acts forming the basis of the charges in a Federal court are the same as those involved in proceedings under Title 46 U. S. Code section 239, the said judgment of conviction is conclusive in the latter proceedings. The person charged may not challenge the jurisdiction of a Federal court in proceedings under Title 46 U. S. Code section 239 and evidence offered to challenge such jurisdiction will not be admitted.

(b) Where the acts involved in a judgment of conviction of a State court are the same as those involved in proceedings under Title 46 U. S. Code section 239 the judgment of conviction is not res judicata of the issues decided. However, where the acts involved in the State court judgment of conviction are the same as those involved in proceedings under Title 46 U. S. Code section 239, such judgment of conviction is admissible in evidence in the latter proceedings and of itself constitutes substantial evidence adverse to the person charged. It is, however, rebuttable.

SUBPART 137.17—DISCLOSURE OF RECORDS

§ 137.17-1 *Statements of witnesses and exhibits.* Except as provided in § 137.17-10, recorded statements of witnesses and exhibits taken in the course of a disciplinary investigation shall be made available for inspection and examination during usual business hours at the appropriate Coast Guard district office or at Coast Guard Headquarters, Washington, D. C. Copies of these records will be made available on written request to the District Commander or the Commandant. If extra copies of the records are available they will be furnished without cost to parties in interest. If sufficient copies are not available, extra or photostatic copies will be made at the expense of the parties in interest requesting such copies.

§ 137.17-5 *Final opinions and orders.* There shall be maintained at Coast Guard Headquarters, Washington, D. C., a file of final opinions and orders in the adjudication of disciplinary proceedings, which file in its complete form is held to be confidential for the reason that disclosure would be prejudicial to the individual or vessel to which it relates without furthering the public interest, however, such file may be inspected or examined after the names or other identifying data has been deleted.

§ 137.17-10 *Records held confidential.* Administrative reports of investigating officers or examiners contained in any disciplinary record, or the investigation or disposition of charges during an investigative non-public stage and before the institution of formal proceedings; documents, memoranda or correspondence of an internal administrative nature; and testimony, documents and other data which should for security reasons not be disclosed; are held confi-

dential because disclosure of information would be prejudicial to the individuals to whom it relates without furthering the public interest and therefore will not be made available for public inspection or release.

§ 137.17-15 *Transcript of disciplinary record.* (a) A complete transcript of a disciplinary record will be made available to any person whose license or certificate is revoked or suspended for the purpose of taking an appeal pursuant to the regulations in Subpart 137.11, or, upon specific request and for good cause shown by the person immediately concerned. Except as provided in this part, transcripts of records in disciplinary proceedings are matters of a confidential nature and are not to be made available for public inspection or release.

(b) The eligible person requesting a transcript, other than for purposes of appeal, where no extra copy is available, shall pay the costs for having it photostated, copied, or transcribed at the commercial rates charged for such work within the locality where the record is kept.

(c) Subject to the payment of costs, as provided in paragraph (b) of this section, the transcript of testimony taken in such disciplinary proceedings will be furnished to any firm, person or agency upon a showing satisfactory to the Commandant that the applicant has a real founded interest in such transcript in that such material is desired for the purpose of assisting in the prosecution or defense of litigation, or prospective litigation, involving civil rights growing out of the incident or incidents under investigation.

§ 137.17-20 *Production upon subpoena.* Where requests for information or material are denied for any reason, the applicant will be advised that the document or material may be produced upon service of a subpoena duces tecum from a court of competent jurisdiction, provided such material is not affected by security considerations.

§ 137.17-25 *Testimony by Coast Guard personnel.* (a) No person in the service of the Coast Guard shall, without the prior approval of the Commandant, give any testimony with respect to any investigation or any other official proceedings in any suit or action in the courts.

(b) An affidavit by the litigant or his attorney, setting forth the interest of the litigant and the information with respect to which the testimony of such officer or employee is desired, must be submitted before permission to testify will be granted. Permission to testify will, in all cases, be limited to the information set forth in the affidavit, or to such portions thereof as may be deemed proper.

SUBPART 137.21—CONSTRUCTION OF REGULATIONS AND RULES OF EVIDENCE

137.21-1 *Construction of regulations.* The regulations in this part shall be liberally construed to insure just, speedy and inexpensive determination of the issues presented.

§ 137.21-5 *Adherence to rules of evidence.* As hearings under this part are

administrative in character, strict adherence to formal rules of evidence is not imperative. However, in the interest of orderly presentation of the facts of a case, the rules of evidence should be observed as closely as possible. Considerable latitude should be extended to the person charged who does not have legal counsel but investigating officers should be required to conform more strictly to the rules of evidence. However, the examiner shall exclude from the record, insofar as practicable, irrelevant, immaterial, and unduly repetitious evidence. The decision of the examiner must be supported by reliable, probative and substantial evidence.

Dated: October 7, 1947.

[SEAL] MERLIN O'NEILL,
Rear Admiral, U. S. Coast Guard,
Acting Commandant.

[F. R. Doc. 47-9210; Filed, Oct. 13, 1947;
8:53 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

Chapter I—Interstate Commerce Commission

[Rev. S. O. 772]

PART 95—CAR SERVICE

DELIVERY OF LOADED CARS TO AHNAPEE

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 8th day of October A. D. 1947.

It appearing, that the Director of the Office of Defense Transportation has written this Commission on September 16, 1947 that the Green Bay and Western Railroad Company, the Kewaunee, Green Bay and Western Railroad Company on the one hand and The Ahnapee and Western Railroad Company on the other hand are engaged in a financial dispute, which dispute can be settled by appropriate court proceeding, and that the two former companies are withholding the delivery of carload freight and accompanying revenue waybills and other necessary papers from the latter, thus retarding and diminishing the utilization of freight cars urgently needed in the domestic economy; he further petitions this Commission to take such action as in its opinion is necessary in the premises;

It further appearing, that effective September 23, 1947, the Green Bay and Western Railroad Company and the Kewaunee, Green Bay and Western Railroad Company issued an embargo against all carload freight (except shipments on which all charges are fully prepaid) destined to all points on The Ahnapee and Western Railway Company, and said Green Bay and Western Railroad Company and the Kewaunee, Green Bay and Western Railroad Company are engaging in taking into account origin-to-final-destination prepaid waybills, allowing those shipments to move to The Ahnapee and Western Railway Company only on memo billing with weights and charges to follow, all for the admitted purpose of attempting to collect an alleged debt said

to be owed them by The Ahnapee and Western Railway Company. The Green Bay and Western Railroad and the Kewaunee, Green Bay and Western Railroad Company insist on continuing the embargo and rebilling practice despite our request to them to cease and desist;

The Commission is of opinion that an emergency requiring immediate action exists to alleviate a shortage of equipment; to facilitate the movement of shipments of carload freight and best promote the service in the interest of the public and the commerce of the people: It is ordered, that:

§ 95.772 *Green Bay and Western Railroad Co. and the Kewaunee, Green Bay and Western Railroad Company—(a) Interchange.* The Green Bay and Western Railroad Company, the Kewaunee, Green Bay and Western Railroad Company are directed:

(1) To discontinue withholding railroad cars loaded with freight, the revenue waybills and other necessary shipping papers for freight shipments consigned to persons, partnerships or corporations located at points on The Ahnapee and Western Railway Company.

(2) To deliver to The Ahnapee and Western Railway Company at Casco Junction, Wisconsin, loaded railroad cars now being withheld, together with the revenue waybills and other necessary shipping papers for freight shipments consigned to persons, partnerships or corporations located at points on The Ahnapee and Western Railway Company.

(3) To receive when offered, at all junction points, interchange, move and deliver loaded railroad cars together with the revenue waybills and other necessary shipping papers for shipments consigned to persons, partnerships or corporations located at points on The Ahnapee and Western Railway Company, and routed via Casco Junction, Wisconsin to that carrier at that junction after the effective date hereof.

(b) *Embargo suspended.* Embargo No. 2, issued by the Green Bay and Western Railroad Company and the Kewaunee, Green Bay and Western Railroad Company September 22, 1947, effective September 23, 1947, as well as the publication thereof on sheet number 488 of Association of American Railroads Embargo Notices, be, and it is hereby, suspended until further order of this Commission. No common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce or comply with the said embargo.

(c) *Rebiling prohibited.* The Green Bay and Western Railroad Company and the Kewaunee, Green Bay and Western Railroad Company are directed to discontinue, on the effective date hereof, the practice of rebilling prepaid carload shipments and the practice of taking into account prepaid billing on shipments covered by origin-to-final-destination through billing to points on The Ahnapee and Western Railroad Company.

(d) *Regulation suspended.* The operation of any or all rules, regulations, or practices, insofar as they conflict with the provisions of this section, is hereby suspended.

(e) *Effective date.* This section shall become effective at 6:00 p. m., October 8, 1947.

(f) *Expiration date.* This section shall expire at 12:01 a. m. December 31, 1947 unless otherwise modified, changed, suspended or annulled by order of this Commission.

(g) *Intrastate application.* The provisions of this section shall apply to intrastate as well as interstate commerce.

It is further ordered, that this order shall vacate and supersede Service Order No. 772 on the effective date hereof; that a copy of this order and direction shall be served upon the Green Bay and Western Railroad Company and the Kewaunee, Green Bay and Western Railroad Company, and Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

(Sec. 1, 24 Stat. 379, as amended; 49 U. S. C. 1 (10)-(17))

By the Commission, Division 3.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 47-9203; Filed, Oct. 13, 1947;
8:47 a. m.]

Chapter II—Office of Defense Transportation

PART 500—CONSERVATION OF RAIL EQUIPMENT

SHIPMENTS OF APPLES

CROSS REFERENCE: For an exception to the provisions of § 500.72 see Part 520 of this chapter, *infra*.

[General Permit ODT 18A, Rev. 24B]

PART 520—CONSERVATION OF RAIL EQUIPMENT; EXCEPTIONS, PERMITS AND SPECIAL DIRECTIONS

SHIPMENTS OF APPLES

Pursuant to Title III of the Second War Powers Act, 1942, as amended, Executive Order 8989, as amended, Executive Order 9729, and General Order ODT 18A, Revised, as amended, General Permit ODT 18A, Revised-24A shall be superseded and it is hereby ordered, that:

§ 520.524 *Shipments of apples.* Notwithstanding the restrictions contained in § 500.72 of General Order ODT 18A, Revised, as amended (11 F. R. 8229, 8329, 10616, 13320, 14172; 12 F. R. 1034, 2386), or Items 150 or 155 of Special Direction ODT 18A-2A, as amended (9 F. R. 118, 4247, 13008; 10 F. R. 2523, 3470, 14908; 11 F. R. 1358, 13793, 14114) any person may offer for transportation and any rail carrier may accept for transportation at point of origin, forward from

point of origin, or load and forward from point of origin, any carload freight consisting of apples:

(a) When the origin of such freight is in the States of Kansas or Missouri, or is any point or place east of a line consisting of the eastern boundary of the State of Minnesota and the Mississippi River south to New Orleans, Louisiana, such freight is packed in boxes, and the quantity loaded in each car is not less than 30,000 pounds; or

(b) When the origin of such freight is in the States of Kansas or Missouri, or is any point or place east of a line consisting of the eastern boundary of the State of Minnesota and the Mississippi River south to New Orleans, Louisiana, such freight is packed in bushel baskets, and

each car is loaded to an elevation of not less than four complete tiers of such baskets, each tier extending the full length of the car, and when loaded the entire floor space of the car is occupied; or

(c) When the origin is any point or place in the States of California, Oregon or Washington, irrespective of whether such freight is packed in boxes or baskets, the quantity loaded in each car is not less than 35,000 pounds: *Provided*, That if any such freight consists of Gravenstein apples the quantity loaded in each car is not less than 30,000 pounds.

This General Permit ODT 18A, Revised-24B, shall become effective October 10, 1947, and shall expire November 15, 1947.

General Permit ODT 18A, Revised-24A (12 F. R. 3452) is hereby revoked as of the effective date of this General Permit ODT 18A, Revised-24B.

(54 Stat. 676, 55 Stat. 236, 56 Stat. 177, 58 Stat. 827, 59 Stat. 658, 60 Stat. 345, 61 Stat. 34, Pub. Law 188, 80th Cong., 50 U. S. C. App. Sup. 633, 645, 1152; E. O. 8989, Dec. 18, 1941, 6 F. R. 6725; E. O. 9389, Oct. 18, 1943, 8 F. R. 14183; E. O. 9729, May 23, 1946, 11 F. R. 5641)

Issued at Washington, D. C., this 8th day of October 1947.

J. M. JOHNSON,
Director Office of Defense
Transportation.

[F. R. Doc. 47-9214; Filed, Oct. 13, 1947;
8:46 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR, Parts 904, 934, 947]

GREATER BOSTON, LOWELL-LAWRENCE AND FALL RIVER, MASS., MILK MARKETING AREAS

NOTICE OF HEARING ON HANDLING; PROPOSED AMENDMENT TO TENTATIVE MARKETING AGREEMENTS AND ORDERS

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) and in accordance with the applicable rules of practice and procedure, as amended (7 C. F. R., Supps. 900.1 et seq., 11 F. R. 7737, 12 F. R. 1159, 4904) notice is hereby given of a public hearing to be held beginning at 10:00 a. m., e. s. t. at each of the following places: Grange Hall, Skowhegan, Maine, October 20, 1947; Fuller Hall, St. Johnsbury, Vermont, October 21, 1947, and Court Room No. 4, Federal Building, Post Office Square, Boston, Massachusetts, October 22, 1947.

This hearing is for the purpose of receiving evidence with respect to proposed amendments to the Class I pricing provisions of the tentative marketing agreements, as amended, and of the orders, as amended, regulating the handling of milk in the Greater Boston, Lowell-Lawrence and Fall River, Massachusetts milk marketing areas (Greater Boston, 12 F. R. 4921, Lowell-Lawrence, 8 F. R. 3114, 8294, 10 F. R. 3125, 11 F. R. 5896, 10695, 14096, 12 F. R. 4929, Fall River, 12 F. R. 4986).

These proposed amendments have not received the approval of the Secretary of Agriculture.

Amendment to the order (No. 4) for the Greater Boston, Massachusetts, milk marketing area was proposed by:

Bellows Falls Cooperative Creamery, Inc.
Bethel Cooperative Creamery, Inc.
Cabot Farmers' Cooperative Creamery Co., Inc.
Connecticut Valley Dairy, Inc.
Grand Isle County Coop. Creamery Association, Inc.
Granite City Cooperative Creamery Association, Inc.

H. P. Hood & Sons, Inc.
Maine Dairymen's Association, Inc.
Manchester Dairy System, Inc.
Milton Cooperative Dairy Corp.
Mt. Mansfield Coop. Cry. and Grain Association, Inc.

New England Milk Producers' Association.
Northern Farms Cooperative, Inc.
Richmond Cooperative Association, Inc.
St. Albans Cooperative Creamery, Inc.
Shelburne Cooperative Creamery, Inc.
Tunbridge Cooperative Creamery, Inc.
United Farmers of New England, Inc.
Vermont Cooperative Creameries, Inc.

Amendment to the order (No. 34) for the Lowell-Lawrence, Massachusetts, milk marketing area was proposed by the Lowell-Lawrence Sales Committee of New England Milk Producers' Association, and the amendment to the order (No. 47) for the Fall River, Massachusetts, milk marketing area was proposed by the Joint Fall River Sales Committee of New England Milk Producers' Association, and Fall River Milk Producers' Association.

The above-named milk producers' cooperative associations and H. P. Hood & Sons, Inc. have requested that the orders be amended in accordance with the recommendations made by the Boston Milkshed Price Committee in a report issued September 19, 1947 by incorporating in the agreements and orders provisions which would automatically adjust Class I prices in each agreement and order in accordance with a formula based upon the index of wholesale commodity prices in the United States as published by the Department of Labor, the index of department store sales in New England as published by the Federal Reserve Bank of Boston, the average retail price of dairy feed ration as published by the market administrator of Order No. 4, and average monthly farm wage rates as reported by the Department of Agriculture; with special adjustment for seasonal pricing and further automatic adjustment if surplus supplies accumulate or a shortage is impending. Copies of the committee report may be obtained from the market administrator at 80 Federal Street, Boston 10, Massachusetts.

The following amendments or amendments similar thereto would be required

to carry out the recommendations of the committee:

A. *Boston*. Delete subdivisions (i) to (vii) inclusive in subparagraph (1) of paragraph (a) in § 904.7 and substitute:

(i) Using the index of wholesale commodity prices in the United States as published by the Department of Labor for the latest month, revise the index to a 1925-29 base equal to 100.

(ii) Using the index of department store sales in New England as reported by the Federal Reserve Bank of Boston for the latest month, revise the index to a 1925-29 base equal to 100.

(iii) Using the average retail price of dairy ration in the Boston milkshed as published by the market administrator of Order No. 4 for the latest month compute an index with a 1925-29 base equal to 100.

(iv) Using the latest monthly farm wage rates reported by the United States Department of Agriculture for each of the following states compute the average weighted as follows, and calculate the index of the average with a base of 1925-29 equal to 100.

State:	Weight
Vermont	77
Maine	10
New Hampshire	7
Massachusetts	6

(v) Subtract from 100 percent, the percentage computed by totaling the quantities of producer milk classified in Class I during the preceding 12 months, dividing such total by the total producer receipts at pool plants for the same period as reported by the market administrator, and multiplying the result by 100.

(vi) Add together the amounts determined in subdivisions (i), (ii) of this subparagraph, 0.6 times the amount determined in subdivision (iii) of this subparagraph, and 0.4 times the amount determined in subdivision (iv) of this subparagraph, divide the total by 3, and round off to nearest whole number.

(vii) Subject to subdivision (viii) of this subparagraph, the Class I price per hundredweight shall be as shown in the following table:

CLASS I PRICE SCHEDULE

Average of indexes pursuant to (vi) of this subparagraph	Class I price (dollars per hundredweight)		
	January, February, March, July, August, and September	April, May, and June	October, November, and December
50-55	\$1.69	\$1.25	\$2.13
57-63	1.91	1.47	2.35
64-70	2.13	1.69	2.57
71-77	2.35	1.91	2.79
78-84	2.57	2.13	3.01
85-90	2.79	2.35	3.23
91-97	3.01	2.57	3.45
98-104	3.23	2.79	3.67
105-111	3.45	3.01	3.89
112-118	3.67	3.23	4.11
119-125	3.89	3.45	4.33
126-132	4.11	3.67	4.55
133-139	4.33	3.89	4.77
140-146	4.55	4.11	4.99
147-152	4.77	4.33	5.21
153-159	4.99	4.55	5.43
160-165	5.21	4.77	5.65
167-173	5.43	4.99	5.87
174-180	5.65	5.21	6.09
181-187	5.87	5.43	6.31
188-194	6.09	5.65	6.53

If the percentage determined in subdivision (v) of this subparagraph is greater than 41 the Class I price shall be 44 cents less than the corresponding figure shown in this table and if the percentage determined in subdivision (v) of this subparagraph is less than 33 or the percentage of producer milk utilized in Class II as announced by the market administrator for any of the twelve preceding months was less than 15, the Class I price shall be 44 cents greater than the corresponding figure shown in this table.

(viii) The Class I price for any of the months of March through June of each year shall not be higher than the Class I price for the immediately preceding month; and the Class I price for any of the months of September through December of each year shall not be lower than the Class I price for the immediately preceding month.

b. *Lowell-Lawrence*: Delete subdivisions (i to vii) inclusive in subparagraph (1) of paragraph (a) of § 934.6 and substitute (i) to (viii) as proposed for Boston except that the table in (vii) would read as follows:

CLASS I PRICE (DOLLARS PER HUNDREDWEIGHT)

Average of indexes pursuant to (vi) of this subparagraph	Class I price (dollars per hundredweight)		
	January, February, March, July, August, and September	April, May, and June	October, November, and December
50-55	\$2.15	\$1.71	\$2.69
57-63	2.37	1.93	2.81
64-70	2.59	2.15	3.03
71-77	2.81	2.37	3.25
78-84	3.03	2.59	3.47
85-90	3.25	2.81	3.69
91-97	3.47	3.03	3.91
98-104	3.69	3.25	4.13
105-111	3.91	3.47	4.35
112-118	4.13	3.69	4.57
119-125	4.35	3.91	4.79
126-132	4.57	4.13	5.01
133-139	4.79	4.35	5.23
140-146	5.01	4.57	5.45
147-152	5.23	4.79	5.67
153-159	5.45	5.01	5.89
160-165	5.67	5.23	6.11
167-173	5.89	5.45	6.33
174-180	6.11	5.67	6.55
181-187	6.33	5.89	6.77
188-194	6.55	6.11	6.99

If the percentage determined in subdivision (v) of this subparagraph is greater than 41 the Class I price shall be 44 cents less than the corresponding figure shown in this table and if the percentage determined in subdivision (v) of this subparagraph is less than 33 or the percentage of producer milk utilized in Class II as announced by the market administrator for any of the twelve preceding months was less than 15, the Class I price shall be 44 cents greater than the corresponding figure shown in this table.

No. 201—3

c. *Fall River*: Delete subdivisions (i) to (vii) inclusive in subparagraph (1) of paragraph (a) of § 947.6 and substitute (i) to (viii) as proposed for Boston except that the table in (vii) would read as follows:

CLASS I PRICE (DOLLARS PER HUNDREDWEIGHT)

Average of indexes pursuant to (vi) of this subparagraph	Class I price (dollars per hundredweight)		
	January, February, March, July, August, and September	April, May, and June	October, November, and December
50-55	\$2.44	\$2.00	\$2.83
57-63	2.66	2.22	3.10
64-70	2.88	2.44	3.32
71-77	3.10	2.66	3.54
78-84	3.32	2.88	3.76
85-90	3.54	3.10	3.98
91-97	3.76	3.32	4.20
98-104	3.98	3.54	4.42
105-111	4.20	3.76	4.64
112-118	4.42	3.98	4.86
119-125	4.64	4.20	5.08
126-132	4.86	4.42	5.30
133-139	5.08	4.64	5.52
140-146	5.30	4.86	5.74
147-152	5.52	5.08	5.96
153-159	5.74	5.30	6.18
160-165	5.96	5.52	6.40
167-173	6.18	5.74	6.62
174-180	6.40	5.96	6.84
181-187	6.62	6.18	7.06
188-194	6.84	6.40	7.28

If the percentage determined in subdivision (v) of this subparagraph is greater than 41 the Class I price shall be 44 cents less than the corresponding figure shown in this table and if the percentage determined in subdivision (v) of this subparagraph is less than 33 or the percentage of producer milk utilized in Class II as announced by the market administrator for any of the twelve preceding months was less than 15, the Class I price shall be 44 cents greater than the corresponding figure shown in this table.

Copies of this notice of hearing and of the tentatively approved marketing agreement and order, now in effect, may be procured from the market administrators at 80 Federal Street, Boston, Massachusetts, or 103 Pleasant Street, Fall River, Massachusetts, or from the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture in Room 1844, South Building, Washington, D. C., or may be there inspected.

Dated: October 9, 1947.

[SEAL]

S. R. NEWELL,
Acting Assistant Administrator,
Production and Marketing
Administration.

[F. R. Doc. 47-9227; Filed, Oct. 13, 1947;
8:45 a. m.]

17 CFR, Part 9531

HANDLING OF LEMONS GROWN IN
CALIFORNIA AND ARIZONANOTICE OF RECOMMENDED DECISION AND OP-
PORTUNITY TO FILE WRITTEN EXCEPTIONS
WITH RESPECT TO PROPOSED AMENDMENTS
TO MARKETING AGREEMENT AND ORDER

Correction

In Federal Register Document 47-9070, appearing at page 6020 of the issue for Wednesday, October 8, 1947, the following corrections are made:

1. In the third column on page 6620, the word "ten" in the seventh line of the "Preliminary statement" should read "two."

2. In the third paragraph of paragraph (1) under "Findings and conclusions"

(page 6621, first column) the word "regulations" in the third and fifth sentences should read "regulation." In the fifth sentence, the word "or" should read "of."

3. In the first line of the undesignated paragraph immediately following paragraph (n) (page 6621, middle column) the word "was" should read "were."

4. In the fifteenth line of paragraph (6) (page 6622, third column) the first word, now reading "that," should read "any."

5. In the fourth line of the first column on page 6623, the word "had" should read "has."

17 CFR, Part 9681

HANDLING OF MILK IN WICHITA, KANSAS,
MARKETING AREADECISION WITH RESPECT TO PROPOSED MAR-
KETING AGREEMENT AND PROPOSED AMEND-
MENTS TO ORDER

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act") and the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders (7 CFR, Supps., 900.1 et seq.; 11 F. R. 7737, 12 F. R. 1159, 4304) a public hearing was held at Wichita, Kansas, on July 24 and 25, 1947 pursuant to the notice thereof which was issued on July 11, 1947 (12 F. R. 4731) upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Wichita, Kansas, marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, the Acting Assistant Administrator, Production and Marketing Administration, on September 5, 1947 filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of the filing of such recommended decision and opportunity to file exceptions thereto was published in the FEDERAL REGISTER of September 10, 1947 (12 F. R. 6010).

The material issues presented on the record were concerned with:

1. The definitions of "handler" "approved plant" and "milk product";
2. The classification of milk;
3. Transfers of milk between handlers and nonhandlers;
4. Minimum Class I and Class II prices through the coming short season;
5. The receipts of other source milk; and
6. A revision of the "base plan."

Rulings on exceptions. No exceptions were filed to the findings, conclusions, and amendment action recommended in the Acting Assistant Administrator's recommended decision with respect to issues numbered 1 and 6. The findings, conclusions, and amendment action so recommended have been adopted in this decision without substantive change.

Exceptions were filed by the Beatrice Foods Company to all or a part of the findings, conclusions, and amendment action recommended by the Acting Assistant Administrator with respect to issues numbered 2, 3, 4 and 5.

In arriving at the findings, conclusions, and amendment action set forth in this decision each of these exceptions was carefully considered in conjunction with the record evidence pertaining thereto. The findings, conclusions, and amendment action recommended by the Acting Assistant Administrator with respect to issues 2, 3 and 5 have been adopted herein without substantive change and the exceptions with respect thereto are overruled.

With respect to the findings and conclusions recommended by the Acting Assistant Administrator with respect to issue number 4, it was contended that amendment action recommended exceeded the scope of the hearing notice and was not substantiated by the evidence on the record. The action recommended by the Acting Assistant Administrator is within the reasonable scope of the class price issue raised by the hearing notice and is substantiated by the evidence contained in the record. This exception is overruled.

Findings and conclusions. Upon the basis of the evidence adduced at such hearing it is hereby found and concluded that:

1. The definition of the term "handler" should be revised to restrict its application to a plant or plants which have been approved by the health authorities of the City of Wichita. Likewise the term "approved plant" should be defined. This definition in conjunction with the revised definition of "handler" should eliminate any possibility of the order's being interpreted in such a way that a handler would be required to report the receipts and utilization of milk at plants operated by him but which do not dispose of Class I or Class II milk within the marketing area.

It is also proposed that a milk product be defined as any product of milk, except Class III products which are disposed in the form in which received without further processing or packaging by the handler. Many handlers act as distributors for a line of packaged products such as fancy cheeses, powdered mixes, etc., and under a strict interpretation of the present provision they would be required to make a full report of the receipts and sales of these products each month. The proposed definition will eliminate the necessity for filing reports with respect to these products.

2. From the evidence it appears that the classification of milk should be as follows: Class I should include all milk, skim milk, flavored milk and buttermilk disposed of for fluid consumption, all unaccounted for milk in excess of 3 percent of total receipts (except receipts from other handlers) and all milk not specifically classified as Class II or Class III milk. Class II milk should include all milk disposed of as cream, cottage cheese, aerated cream, eggnog, and substandard cream products. Class III milk should include butter, cheese, and other manu-

factured dairy products, milk sold to wholesale bakeries, etc., route returns from which the salvage of fat is impossible, and unaccounted for milk up to 3 percent of receipts (except receipts from other handlers)

The evidence indicates that butter-milk, flavored milk drinks and bottled skim milk should be in Class I regardless of their butterfat content. They must meet the same health requirements as fluid whole milk and they are competitive with it, whether or not they contain any appreciable amount of butterfat. Therefore the requirement in the present order limiting Class I products to those containing more than 1 percent butterfat should be dropped.

While the language has been changed the product classification of Class II which is proposed herein is the same as in the present order except for the reclassification of buttermilk and flavored milk drinks discussed above. The evidence fails to justify the reclassification of aerated cream, eggnog or cottage cheese as Class III as was proposed by the handlers.

Class III remains essentially the same as in the present order although the product classification has been spelled out in much greater detail. It varies from the present order only in that any new product shall be Class I rather than Class III.

3. There appears in the record considerable testimony with respect to the proper classification of milk and cream which is transferred by a handler to a nonhandler. This problem is further complicated by the fact that most handlers receive type "C" milk for manufacturing purposes as well as graded milk from producers. From the evidence it appears that type "C" milk, when sold to a nonhandler, should be Class III as long as it is so labeled, since it may not be used for Class I or Class II purposes.

Except as noted above, it appears that any milk moved to a plant more than 100 miles distant from the marketing area should be Class I if moved in the form of milk or skim milk, and Class II if moved in the form of cream. There is little controversy with respect to the classification of milk so moved since milk is seldom, if ever, moved that distance except for fluid purposes. Cream, however, is at times moved long distances for manufacturing, especially into ice cream. The handlers contend that classification of such cream as Class II would hamper their business. However, the record indicates that most sales of this nature are of type "C" cream and that very little graded cream is ever available for such sales. Therefore it appears that the proposed classification would have little if any effect upon these sales.

It was proposed that any cream shipped to a purely manufacturing plant regardless of distance, should be Class III. Since the purpose of the hundred mile limitation is to obviate the necessity of the market administrator's traveling great distances to verify the utilization of small lots of milk, it appears that adoption of such a proposal would defeat this purpose. Were this proposal adopt-

ed it appears that the market administrator would be required to inspect such plants to determine whether they were engaged solely in manufacturing, or whether they also conducted a fluid distribution business.

A further proposal was that the market administrator accept without further verification a sworn affidavit of the use of cream shipped more than 100 miles. Obviously such a proposal is impracticable since it would permit unlimited opportunity for evasion of the order by unscrupulous persons.

From the evidence it appears that the provisions contained herein for the classification of milk transferred from a handler to a nonhandler are reasonable.

4. It appears that minimum Class I and Class II prices should be fixed for the delivery periods prior to March 1, 1948.

While it appears that under normal conditions the existing Class I and Class II prices which are 80 cents and 55 cents respectively over the basic formula price (either the price paid by a group of condenseries or the price resulting from a formula based on the market values of butter and nonfat dry milk solids) would be adequate, existing economic conditions are such that they seem inadequate at the present time. During recent months the prices of manufactured dairy products, on which the Class I and Class II prices are based have fallen sharply. During the same period there has been a substantial increase in the cost of feeds, labor, cows, etc. The price of competing farm commodities such as hogs, beef, and grains, especially wheat and corn, have also increased rapidly.

Since the territory in the vicinity of Wichita is a diversified farm area and farmers can readily shift from dairying to other livestock and grains, it is necessary that the returns from dairying be maintained close to the returns from other farm commodities. Otherwise farmers will transfer their emphasis from dairying to other enterprises and a serious shortage of milk might develop in consequence.

In view of the present high prices of beef, hogs, and wheat, and the greatly increased costs of feeds, labor, cows, etc., it appears that producers must be assured that returns from dairying will be sufficient to cover their increased costs during the fall and winter months of heavy feeding. Without this assurance there is a distinct likelihood that producers will reduce or completely disperse their dairy herds and concentrate on the production of wheat and livestock, the returns from which are very favorable when compared to dairying. Therefore it appears that producers must be assured that the price of milk will not go below a price which will reflect the standards prescribed by the Agricultural Marketing Agreement Act, at least through February 1948. Compliance with these standards will require the payment to producers of not less than \$5.00 per hundredweight for Class I milk and \$4.75 per hundredweight for Class II milk for any delivery period prior to March 1, 1948. The proposal to extend these minimum prices only through December 1947 appears inade-

quate since it is felt that the efficacy of the program would be lost if producers were assured of such prices for only a portion of the fall and winter season.

Handlers objected to any consideration of an extension of these prices beyond December 1947. The evidence indicates, however, that the conditions which will prevail in the market from September through December 1947 will continue through February 1948. Thus, there is no justification for lower prices in January and February than those obtaining for the immediately preceding months.

The evidence indicates that during the period January 1946 to July 1947, there has been an increase of 18 percent in the average cost of factors affecting milk production such as feeds, labor, cows, etc. The proposed minimum prices represent an increase of only 15 percent over the prices which were in effect in June 1946 plus the subsidy which was being paid producers at that time. Thus the proposed increase is barely sufficient to cover the increased costs to producers. During the same period the average prices of beef, hogs, and wheat have increased 52 percent, 68 percent, and 21.5 percent, respectively.

The proposed prices are also substantially below the prices received by farmers last fall and winter, being 74 cents per hundredweight below the peak price of December 1946, and 43 cents below the average price for the period October 1946 to February 1947.

5. The existing order provides that if a handler uses other source milk in Class I or Class II when producer milk is available for such use he must pay into the producer-settlement fund the difference between the Class III price and the price of the class in which such milk was used. It appears desirable to clarify the meaning of the word "available." It is proposed that the payment above described shall not apply whenever milk is available to the handler either directly from producers or from other handlers at the class prices. It appears reasonable to consider that milk is available when it may be obtained at the class prices for such milk provided in the order. This protects the handler by freeing him from any obligation to purchase milk at an exorbitant handling charge, and it protects producers by making it easier to shift milk between plants as it is needed. The argument advanced by one handler that milk should not be considered available unless it could be secured from the same source in any desired quantity every day in the year appears to be too unreasonable.

6. It is also proposed that the "base plan" in the order be made more flexible. The present plan is very rigid and makes it extremely difficult for a producer to increase his base. This could cause some inequity by preventing producers from sharing in the increased milk sales as they increase their production which is needed on the market.

The proposal contained herein provides for the establishment of new bases each year. Thus the producer who increases his production during the year is virtually assured of having his base increased the following year if the in-

crease occurs during the short months when production is most needed on the market. Since the bases are set on the production during the short months, the producers who are desirous of having a larger base will be required to produce milk when it is most needed on the market. This should tend to level off the seasonal peaks of production and should result in a more adequate supply during the late summer and fall months and a less burdensome surplus during the spring months of flush production.

The producers also proposed that whenever base deliveries are less than the total Class I and Class II sales each producer should be given an emergency base to bring bases up to Class I and Class II sales. The purpose of this is to create equity and pay producers the base price for surplus milk which is used in Class I or Class II. Without some provision of this kind the difference between the surplus price and the Class I or Class II price would be used to inflate the base price.

The amount of work involved in computing emergency bases, however, would be very great and in some instances the amount of the increase in base would amount to only a fraction of a pound. The same result could be achieved, and without any additional work by adoption of the proposed plan whereby the surplus price, instead of being the Class III price, would be the actual value of the surplus milk according to its use classification. Base milk would be allocated to the top utilization on the market, and the surplus milk would be allocated to the remaining utilization and priced accordingly.

Therefore it has been proposed that no emergency bases be computed, and that surplus milk be priced according to its actual classification instead of at the Class III price.

Several other proposals were contained in the notice of hearing but no evidence was presented with respect to them.

7. General findings and conclusions.

(a) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(b) The proposed marketing agreement and order, as amended, and as hereby proposed to be further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in the said tentatively approved marketing agreement upon which the hearing has been held; and

(c) The prices calculated to give milk produced for sale in the said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 8 (e) of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply of and demand for such milk, and the minimum prices specified in the proposed marketing agreement and order, as amended, and as hereby proposed to be further amended, are such prices as will reflect

the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled "Marketing agreement regulating the handling of milk in the Wichita, Kansas, marketing area" and "Order amending the order, as amended, regulating the handling of milk in the Wichita, Kansas, marketing area," which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

It is hereby ordered that all of this decision, except the attached marketing agreement, be published in the *FEDERAL REGISTER*. The regulatory provisions of said marketing agreement are identical with those contained in the attached order, amending the order, as amended, which will be published with the decision.

This decision filed at Washington, D. C., this 9th day of October 1947.

[SEAL]

N.-E. DODD,

Acting Secretary of Agriculture.

Order¹ Amending the Order as Amended, Regulating the Handling of Milk in the Wichita, Kansas, Marketing Area

§ 968.0 *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act") and the rules of practice and procedure covering the formulation of marketing agreements and orders (7 CFR, Supps., 900.1, et seq., 11 F. R. 7737; 12 F. R. 1159, 4904), a public hearing was held upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Wichita, Kansas, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(a) The said order, as amended, and as hereby further amended, and all of the terms and conditions of said order, as amended and as hereby further amended, will tend to effectuate the declared policy of the act;

(b) The prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 8 (e) of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supplies of and demand for such milk, and the mini-

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

mum prices specified in the order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(c) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which hearings have been held.

The foregoing findings are supplementary and in addition to the findings made in connection with the issuance of the aforesaid order and the findings made in connection with the issuance of each of the previously issued amendments thereto; and all of said previous findings are hereby ratified and affirmed except insofar as such findings may be in conflict with the findings set forth herein.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Wichita, Kansas, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order, as amended, is hereby further amended as follows:

1. Amend § 968.1 by deleting paragraph (f) thereof and substituting therefor the following:

(f) "Handler" means any person who, on his own behalf or on behalf of others, disposes of as Class I or Class II milk in the marketing area all or a portion of the milk purchased or received by him at an approved plant from (1) producers, (2) his own production, and (3) other handlers. This definition shall include a cooperative association with respect to milk which it causes to be delivered from a producer to a plant from which no milk is disposed of as Class I milk or as Class II milk in the marketing area.

2. Further amend § 968.1 by adding thereto the following paragraphs:

(j) "Approved plant" means any plant approved by the health authorities of the City of Wichita, Kansas, for the handling of milk to be disposed of for fluid consumption as milk in the marketing area and currently used for any or all the functions of receiving, weighing (or measuring), sampling, cooling, pasteurizing or other preparation of milk for sale or disposition as milk or cream for fluid consumption in the marketing area.

(k) "Milk product" means any product manufactured from milk or milk ingredients except products which fall within the definition of Class III milk pursuant to subparagraph (3) of paragraph (b) of § 968.3 and which are disposed of in the form in which received without further processing or packaging by the handler.

3. Delete paragraph (a) of § 968.3 and substitute therefor the following:

(a) *Basis of classification.* All milk and milk products purchased, received or produced by each handler, including milk of a producer which a cooperative

association causes to be delivered to a plant from which no milk is disposed of in the marketing area, shall be reported by the handler in the classes set forth in paragraph (b) of this section subject to the following conditions:

(1) Except as provided in subparagraph (3) of this paragraph, milk, skim milk, or cream moved in fluid form from an approved plant to an unapproved plant located more than 100 miles from the approved plant shall be Class I if moved in the form of milk or skim milk, and Class II if moved in the form of cream.

(2) Except as provided in subparagraph (3) of this paragraph, milk, skim milk, or cream moved in fluid form from an approved plant to an unapproved plant located not more than 100 miles from the approved plant and from which fluid milk and cream are distributed, shall be Class I if moved in the form of milk or skim milk and Class II if moved in the form of cream, unless the purchaser certifies that the market administrator may verify his records. If the market administrator is permitted to verify the necessary records such milk, skim milk, or cream, shall be classified as follows: (i) Determine the classification of all milk received in the unapproved plant, and (ii) allocate the milk, skim milk, or cream received from the approved plant to the highest use classification remaining after subtracting in series beginning with the highest use classification, the receipts of milk at such unapproved plant directly from dairy farmers who the market administrator determines constitute its regular source of milk for Class I and Class II use.

(3) Milk, skim milk, or cream, which is moved to an unapproved plant from an approved plant which regularly receives type C milk, and which is sold as "type C milk for manufacturing only" and is so tagged or labeled, may be classified as Class III milk up to the extent of the receipt of type C milk at the approved plant.

(4) Except as provided in subparagraph (1) of this paragraph, milk, skim milk, or cream, moved from an approved plant to an unapproved plant which does not distribute fluid milk or cream shall be classified as Class III milk.

(5) Milk or skim milk sold or disposed of by a handler who purchases or receives milk from producers to another handler shall be classified as Class I milk: *Provided*, That if such milk or skim milk, except milk for skim milk sold or disposed of by such handler to another handler who purchases or receives no milk from producers, is reported by the receiving handler or by the disposing handler as having been utilized as Class II milk or Class III milk, it shall be classified accordingly but in no event shall the amount classified in any class exceed the total use in such class by the receiving handler.

(6) Cream sold or disposed of as fluid cream by a handler who purchases or receives milk from producers to another handler shall be classified as Class II milk: *Provided*, That if such cream, except cream sold or disposed of by such handler to another handler who pur-

chases or receives no milk from producers, is reported by the receiving handler or by the disposing handler as having been utilized as Class III milk, such cream shall be classified accordingly but in no event shall the amount classified in any class exceed the total use in such class by the receiving handler.

(7) Milk, skim milk, or cream sold or disposed of by a handler who receives no milk from producers to another handler who receives milk from producers shall be classified in the lowest use classification of the purchasing handler.

4. Delete paragraph (b) of § 968.3 and substitute therefor the following:

(b) *Classes of utilization.* Subject to the conditions set forth in paragraph (a) of this section the classes of utilization shall be as follows:

(1) Class I milk shall be all milk and skim milk disposed of for consumption as milk, skim milk, buttermilk, flavored milk and milk drinks, and all milk not classified as Class II milk or Class III pursuant to subparagraphs (2) and (3) of this paragraph.

(2) Class II milk shall be all milk used to produce cream which is disposed of in the form of cream (other than for use in products specified in subparagraph (3) of this paragraph), cottage cheese, products sold or disposed of in the form of cream testing less than 18 percent butterfat, acrated cream, and eggnog.

(3) Class III milk shall be all milk, used to produce butter, cheese (other than cottage cheese), evaporated milk, condensed milk, ice cream, ice cream mix and powdered milk; disposed of as livestock feed; used for starter churning, wholesale baking and candy making purposes; the milk equivalent of butterfat accounted for as loss in products where the salvage of fat is impossible; and the milk equivalent of unaccounted for butterfat not in excess of 3 percent of the total receipts of butterfat other than receipts from other handlers.

5. Delete subparagraphs (1), (2), and (3) of paragraph (d) of § 968.3 and substitute therefor the following:

(1) Determine the total pounds of milk received as follows: Add together total pounds of milk received at approved plants from (i) producers, (ii) own farm production, (iii) other handlers, and (iv) other sources.

(2) Determine the total pounds of butterfat received as follows: (i) Multiply by its average butterfat test the weight of the milk received at approved plants from (a) producers, (b) own farm production, (c) other handlers, and (d) other sources, and (ii) add together the resulting amounts.

(3) Determine the total pounds of milk in Class I as follows: (i) Convert to pounds the quantity of Class I milk on the basis of 2.15 pounds per quart, and subtract the weight of any flavoring materials included, (ii) multiply the result by the average butterfat test of such milk, and (iii) if the quantity of butterfat so computed when added to the pounds of butterfat in Class II milk and

Class III milk, computed pursuant to subparagraphs (4) (ii) and (5) (iv) of this paragraph is less than the total pounds of butterfat received computed in accordance with subparagraph (2) of this paragraph, an amount equal to the difference shall be divided by 3.8 percent and added to the quantity of milk determined pursuant to subdivision (i) of this subparagraph.

6. Add to § 968.4 (a) (1) the following proviso: "Provided, That for any delivery period prior to March 1, 1948, the price shall be not less than \$5.00."

7. Add to § 968.4 (a) (2) the following proviso: "Provided, That for any delivery period prior to March 1, 1948, the price shall be not less than \$4.75."

8. Amend paragraph (e) of § 968.6 by adding thereto the following phrase: "either directly from producers or at the plant of another handler at the class prices provided pursuant to § 968.4 (a) (1) and (2) "

9. Delete subparagraph (5) of paragraph (b) of § 968.7 and substitute therefor the following:

(5) Compute the total value of the milk which is in excess of the delivered base of producers computed pursuant to subparagraph (4) of this paragraph and which is included in the computation pursuant to paragraph (a) of this section as follows: (i) Determine the classification of milk in excess of base by allocating such milk first to Class III milk and then to each succeeding higher classification until all such milk has been classified; (ii) multiply the total pounds of excess milk allocated to each class by the appropriate class prices provided in paragraph (a) of § 968.4; and (iii) add together the resulting amounts.

10. Amend § 968.7 (b) by renumbering subparagraph (8) as subparagraph (9) and inserting as subparagraph (8) the following:

(8) Divide the result obtained in subparagraph (5) of this paragraph by the total hundredweight of milk in excess of the delivered base of producers. This result shall be known as the "excess price" for such delivery period.

11. Delete § 968.8 (a) (2) and substitute therefor the following:

(2) To each producer, except as set forth in subparagraph (3) of this para-

graph, not less than the excess price, computed pursuant to § 968.7 (b) (8), for that quantity of milk received from such producer in excess of such producer's base; and

12. Delete § 968.9 and substitute therefor the following:

§ 968.9 *Base rating*—(a) *Determination of period base*. For each delivery period the base of each producer shall be a quantity of milk calculated by the market administrator in the following manner: Multiply the applicable figure computed pursuant to paragraph (b) (1), (b) (2), or (b) (3) of this section by the number of days during such delivery period on which milk was received from such producer.

(b) *Determination of daily base*. (1) Effective January 1, 1948, and for each subsequent year thereafter the daily base of each producer, who regularly delivered milk to a handler during the next previous delivery periods of August, September, October, and November shall be computed by the market administrator in the following manner:

(i) Determine for each such producer his average daily delivery of milk to a handler for the time he delivered during the period from the next previous August 1 to November 30.

(2) The daily base of each producer who did not regularly deliver milk to a handler during the next previous delivery periods of August, September, October, and November but who began deliveries of milk to a handler subsequent to August 31 shall be computed by the market Administrator in the following manner:

(i) For each delivery period from the date upon which the producer first delivers milk to a handler until the end of the next full calendar year the market administrator shall multiply such producer's daily average deliveries of milk during each period by the percentage that total base deliveries are to total deliveries of all producers.

(3) In case of a handler who is also a producer and who disposes of all of his delivery routes to another handler who is not a producer, the market administrator shall determine the daily average of the total sales of Class I milk and Class II milk by such producer during the preceding three months. The figures so determined shall be such pro-

ducer's base until his base may be established pursuant to subparagraph (1) of this paragraph.

(c) *Base rules*. (1) Any producer who ceases to deliver milk to a handler for a period of more than 30 consecutive days shall forfeit his base. In the event such producer thereafter commences to deliver milk to a handler he shall be allotted a daily base computed in the manner provided in paragraph (b) (1) or (b) (2) of this section.

(2) A landlord who rents on a share basis shall be entitled to the entire daily base to the exclusion of the tenant if the landlord owns the entire herd. A tenant who rents on a share basis shall be entitled to the entire daily base to the exclusion of the landlord if the tenant owns the entire herd. If the cattle are jointly owned by the tenant and landlord, the daily base shall be divided between the joint owners according to ownership of the cattle when such share basis is terminated.

(3) A producer, whether landlord or tenant, may retain his base when moving his entire herd of cows from one farm to another: *Provided*, That at the beginning of a tenant and landlord relationship the base of each landlord and tenant may be combined and may be divided when such relationship is terminated.

(4) Base may be transferred only under the following conditions: (i) in case of the death of a producer, his base may be transferred to a surviving member or members of his family who carry on the dairy operations, and (ii) on the retirement of a producer, his base may be transferred to an immediate member of his family who carries on the dairy operations.

(5) The base of two producers may be combined in the case of forming a partnership, or may be divided in the case of the dissolution of a partnership.

(6) For the purposes of this section only, the term "producer" shall include any person who has been a producer as defined in § 968.1 (e) but whom the Wichita Board of Health has suspended temporarily for failure to produce milk in conformity with the applicable health regulations of the City of Wichita.

[F. R. Doc. 47-9203; Filed, Oct. 13, 1947; 9:20 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Misc. 1925285]

ALASKA

NOTICE OF FILING OF PLATS OF SURVEY ACCEPTED JULY 23, 1945

OCTOBER 7, 1947.

Notice is given that the plats of extension survey of lands hereinafter described will be officially filed in the District Land Office at Anchorage, Alaska, effective at 10:00 a. m. on De-

cember 9, 1947. At that time the lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, or selection as follows:

(a) *Ninety-day period for preference-right filings*. For a period of 90 days from December 9, 1947, to March 8, 1948, inclusive, the public lands affected by this notice shall be subject to (1) application under the homestead laws, or the small tract act of June 1, 1938 (52 Stat. 609, 43 U. S. C. sec. 682a), as amended, by qualified veterans of World

War II, for whose service recognition is granted by the act of September 27, 1944 (58 Stat. 747, 43 U. S. C. secs. 279-283) subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Application by such veterans shall be subject to claims of the classes described in subdivision (2)

(b) *Twenty-day advance period for simultaneous preference-right filings*. For a period of 20 days from November

[Misc. 2133641]

WYOMING

ORDER PROVIDING FOR THE OPENING OF
PUBLIC LANDS RESTORED FROM SHOSHONE
PROJECT

OCTOBER 3, 1947.

An order of the Bureau of Reclamation dated January 10, 1947, concurred in by the Acting Assistant Director, Bureau of Land Management, April 11, 1947, revoked Departmental Order of May 2, 1919 so far as it withdrew in the first form prescribed by Section 3 of the Reclamation Act of June 17, 1902 (32 Stat. 388) the lands hereinafter described in connection with the Shoshone Project, Wyoming, and provided that such revocation shall not affect the withdrawal of any other lands by said order or affect any other order withdrawing or reserving the lands described.

At 10:00 a. m. on December 4, 1947, the lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, or selection as follows:

(a) *Ninety-day period for preference-right filings.* For a period of 90 days from December 5, 1947, to March 4, 1948, inclusive, the public lands affected by this order shall be subject to (1) application under the homestead or the desert land laws, or the small tract act of June 1, 1938 (52 Stat. 609, 43 U. S. C. sec. 682a) as amended, by qualified veterans of World War II, for whose service recognition is granted by the act of September 27, 1944 (58 Stat. 747, 43 U. S. C. secs. 279-283) subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications by such veterans shall be subject to claims of the classes described in subdivision (2)

(b) *Twenty-day advance period for simultaneous preference-right filings.* For a period of 20 days from November 15, 1947, to December 4, 1947, inclusive, such veterans and persons claiming preference rights superior to those of such veterans, may present their applications, and all such applications, together with those presented at 10:00 a. m. on December 5, 1947, shall be treated as simultaneously filed.

(c) *Date for non-preference right filings authorized by the public-land laws.* Commencing at 10:00 a. m. on March 5, 1948, any of the lands remaining unappropriated shall become subject to such application, petition, location, or selection by the public generally as may be authorized by the public-land laws.

(d) *Twenty-day advance period for simultaneous non-preference right filings.* Applications by the general public may be presented during the 20-day period from February 14, 1948, to March 4, 1948, inclusive, and all such applications, together with those presented at 10:00 a. m. on March 5, 1948, shall be treated as simultaneously filed.

Veterans shall accompany their applications with certified copies of their cer-

tificates of discharge, or other satisfactory evidence of their military or naval service. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated affidavits in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the District Land Office at Cheyenne, Wyoming, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations (Circular No. 324, May 22, 1914, 43 L. D. 254), and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations and applications under the desert land laws and the small tract act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the District Land Office at Cheyenne, Wyoming.

The lands affected by this order are described as follows:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 52 N., R. 101 W., sec. 29, W½SE¼.

The above-described area aggregates 80.00 acres. The land is rough, broken and hilly with a clay loam soil containing much rock.

The following-described lands, aggregating 84.04 acres have been patented and are not subject to entry.

T. 51 N., R. 98 W.,

Sec. 21, Lot 36;

Sec. 22, Lots 36 and 37.

FRED W JOHNSON,
Director[F. R. Doc. 47-9190; Filed; Oct. 13, 1947;
8:52 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 2811 et al.]

PAN AMERICAN AIRWAYS, INC.

NOTICE OF HEARING

In the matter of the application of Pan American Airways, Inc., for amendment of its certificates of public convenience and necessity authorizing air transportation between the United States and Latin America, so as to consolidate certain routes authorized therein, and to authorize certain route extensions, Docket No. 2811, the application of Pan American Airways, Inc., for amendment of the certificate authorizing air transportation between Miami, Fla., and Balboa, Canal Zone, so as to substitute Camaguey, Cuba, for Cienfuegos, Cuba, as the intermediate point between Miami, Fla., and Montego Bay, Jamaica, Docket No. 2977; and the application of Chicago and Southern Air Lines, Inc., for amendment of the certificate authorizing its foreign route so as to substitute Kingston, Jamaica, for Camaguey, Cuba, as an intermediate point between Havana, Cuba, and Port-au-Prince, Haiti, Docket No. 2684.

19, 1947 to December 9, 1947, inclusive, such veterans and persons claiming preference rights superior to those of such veterans, may present their applications, and all such applications, together with those presented at 10:00 a. m. on December 9, 1947, shall be treated as simultaneously filed.

(c) *Date for non-preference-right filings authorized by the public-land laws.* Commencing at 10:00 a. m. on March 9, 1948, any of the lands remaining unappropriated shall become subject to such application, petition, location, or selection by the public generally as may be authorized by the public-land laws.

(d) *Twenty-day advance period for simultaneous non-preference-right filings.* Applications by the general public may be presented during the 20-day period from February 18, 1948 to March 9, 1948, inclusive, and all such applications, together with those presented at 10:00 a. m. on March 9, 1948, shall be treated as simultaneously filed.

Veterans shall accompany their applications with certified copies of their certificates of discharge, or other satisfactory evidence of their military or naval service. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated affidavits in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the District Land Office, Anchorage, Alaska, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations (Circular No. 324, May 22, 1914, 43 L. D. 254) and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 65 and 66, of Title 43 of the Code of Federal Regulations and applications under the small tract act of June 1, 1938, shall be governed by the regulations contained in Part 257, of that title.

Inquiries concerning these lands shall be addressed to the Acting Manager, District Land Office, Anchorage, Alaska.

The lands affected by this notice are described as follows:

COPPER RIVER MERIDIAN

T. 4 N., R. 1 W.,
sec. 4, lots 1 to 6, inclusive, S½NW¼, SW¼,
secs. 5 and 6, all.T. 5 N., R. 1 W.,
secs. 19, 20, 29, 30, 31 and 32, all.

The areas described aggregate 5,522.77 acres. The major part of this land is level and of the tundra type. It is largely wet and marshy and covered with moss and scrub pine, spruce, aspen, and cottonwood timber.

The W½ sec. 4, all sec. 5, E½ sec. 6, T. 4 N., R. 1 W., and SE¼ sec. 19, S½ sec. 20, all sec. 29, NE¼ sec. 30 and all of sec. 32, T. 5 N., R. 1 W., are withdrawn from all form of appropriation under the public land laws, for the use of the Department of Commerce Air Navigation Site withdrawal No. 167, as amended, by the Departmental orders of September 15, 1941 and February 14, 1942.

FRED W JOHNSON,
Director.[F. R. Doc. 47-9191; Filed, Oct. 13, 1947;
8:52 a. m.]

For further details of the operations proposed and the route modifications requested, the parties are referred to the applications, the examiner's prehearing conference report, and the correspondence with respect thereto, which are on file with the Civil Aeronautics Board.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, that the above applications are assigned for hearing on October 20, 1947, at 10:00 a. m. (eastern standard time) in Conference Room A, Departmental Auditorium, Constitution Avenue between 12th and 14th Streets NW., Washington, D. C., before Examiner Ralph L. Wiser.

Without limiting the scope of the issues to be considered, particular attention will be directed to the following matters:

1. Whether the proposed amendments of certificates are required, in whole or in part, by the public convenience and necessity.

2. Whether the applicants are fit, willing, and able to perform the proposed new transportation properly and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder.

Notice is further given that any person, other than the parties of record, desiring to be heard in this proceeding shall file with the Board on or before October 20, 1947, a statement setting forth the issues of fact and law raised by this proceeding which he desires to controvert.

Dated at Washington, D. C., October 8, 1947.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 47-9207; Filed, Oct. 13, 1947;
8:46 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 6651]

ALLOCATION OF FREQUENCIES TO CLASSES OF NON-GOVERNMENTAL SERVICES IN RADIO SPECTRUM FROM 10 TO 30,000,000 KILOCYCLES

ORDER FURTHER POSTPONING GENERAL MOBILE HEARING, AND EXTENDING DATE OF FILING APPEARANCES

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the second day of October 1947;

It is ordered, On the Commission's own motion, that the hearing in the above-entitled matter scheduled to be held on October 27, 1947, be postponed to November 24, 1947, and that the date for filing appearances and written statements and for filing supplements or amendments to appearances and statements already filed be extended to November 1, 1947.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 47-9212; Filed, Oct. 13, 1947;
8:53 a. m.]

[Docket Nos. 7400, 7972]

HEARST RADIO, INC. (WBAL), AND PUBLIC SERVICE RADIO CORP.

ORDER CONTINUING HEARING

In re applications of Hearst Radio, Inc. (WBAL), Baltimore, Maryland, Docket No. 7400, File No. BR-152, for renewal of license; Public Service Radio Corp., Baltimore, Maryland, Docket No. 7972, File No. BP-5257, for construction permit.

The Commission having under consideration a petition by Hearst Radio, Inc., filed September 29, 1947, requesting a continuance for approximately sixty (60) days of the hearing on the above-entitled applications now scheduled to be held on October 6, 1947, at Baltimore, Maryland; and a pre-hearing having been scheduled in the matter for September 30, 1947,

It is ordered, This 30th day of September 1947, that the said petition of Hearst Radio, Inc., be, and it is hereby, granted in part, and that the consolidated hearing on the above-entitled applications be, and it is hereby, continued to 10 o'clock a. m. on November 3, 1947, at Baltimore, Maryland.

It is further ordered, That the pre-hearing conference in the above-entitled matter be, and it is hereby, continued to 2:30 o'clock p. m. on October 15, 1947, in the offices of Rosel H. Hyde, Presiding Commissioner, Room 7235, New Post Office Building, Washington, D. C.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 47-9211; Filed, Oct. 13, 1947;
8:53 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-930]

PANHANDLE EASTERN PIPE LINE CO.

NOTICE OF FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

OCTOBER 8, 1947.

Notice is hereby given that, on October 8, 1947, the Federal Power Commission issued its findings and order entered October 7, 1947, issuing certificate of public convenience and necessity in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 47-9192; Filed, Oct. 13, 1947;
8:59 a. m.]

[Docket No. G-933]

PANHANDLE EASTERN PIPE LINE CO.

NOTICE OF FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

OCTOBER 8, 1947.

Notice is hereby given that, on October 7, 1947, the Federal Power Commission issued its findings and order entered October 7, 1947, issuing certificate of public convenience and necessity in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 47-9193; Filed, Oct. 13, 1947;
8:59 a. m.]

[Project No. 1977]

COOPERATIVE SERVICE ASSOCIATION

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT

OCTOBER 7, 1947.

Public notice is hereby given, pursuant to the provisions of the Federal Power Act (16 U. S. C. 791-825r) that the Cooperative Service Association of Concord, New Hampshire, has applied for preliminary permit for proposed Project No. 1977 on Blackwater River, a tributary of Contoocook River, in Merrimack County, New Hampshire, affecting lands of the United States within the area of the Blackwater Reservoir flood-control project. The proposed scheme of development is to modify the existing Blackwater Dam so as to retain its flood-control benefits, and to construct a 10,000-foot penstock, a surge tank, and a powerhouse containing 3 units with a total capacity of 12,000 horsepower.

Any protest against the approval of this application or request for hearing thereon, with the reason for such protest or request and the name and address of the party or parties so protesting or requesting, should be submitted on or before November 10, 1947, to the Federal Power Commission, Washington 25, D. C.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 47-9194; Filed, Oct. 13, 1947;
8:53 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 7-1009]

ST. REGIS PAPER CO.

NOTICE OF APPLICATION FOR UNLISTED TRADING PRIVILEGES AND OF OPPORTUNITY FOR HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Philadelphia, Pa., on the 8th day of October A. D. 1947.

The Los Angeles Stock Exchange, pursuant to section 12 (f) (2) of the Securities Exchange Act of 1934 and Rule X-12F-1 thereunder, has made application for unlisted trading privileges in the Common Stock, \$5.00 Par Value, of St. Regis Paper Company, a security listed and registered on the New York Stock Exchange.

Rule X-12F-1 provides that the applicant shall furnish a copy of the application to the issuer and to every exchange on which the security is listed or already admitted to unlisted trading privileges. The application is available for public inspection at the Commission's principal office in Philadelphia, Pennsylvania.

Notice is hereby given that, upon request of any interested person received prior to November 10, 1947, the Commission will set this matter down for hearing. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Philadelphia, Pennsylvania. If no one requests a hearing on this mat-

ter, this application will be determined by order of the Commission on the basis of the facts stated in the application, and other information contained in the official file of the Commission pertaining to this matter.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 47-9198; Filed, Oct. 13, 1947;
8:46 a. m.]

[File Nos. 54-106, 31-524, 54-107, 31-523,
59-52]

BUFFALO, NIAGARA AND EASTERN POWER
CORP. ET AL.

NOTICE OF FILING OF REQUEST FOR EXTENSION
OF TIME TO COMPLY WITH COMMISSION
ORDER AND TO PAY BANK INDEBTEDNESS

At a regular session of the Securities and Exchange Commission, held at its office in the city of Philadelphia, Pennsylvania, on the 7th day of October 1947.

In the matter of Buffalo, Niagara and Eastern Power Corporation, File Nos. 54-106; 31-524; Niagara Hudson Power Corporation, File Nos. 54-107; 31-523; Niagara Hudson Power Corporation and its subsidiary companies, respondents, File No. 59-52.

The Commission, having by order dated October 4, 1945, approved a plan of reorganization and consolidation of Buffalo, Niagara and Eastern Power Corporation and certain of its subsidiaries, which plan provided, among other things, for (1) the disposition by Niagara Hudson Power Corporation ("Niagara Hudson") within one year from November 1, 1945, of all of its interests, direct or indirect, in Buffalo Niagara Electric Corporation ("Buffalo Niagara") unless such time is extended or the disposition requirements of the order modified or altered, and (2) the issuance and sale by Niagara Hudson of unsecured notes to seventeen banks in the principal amount of \$40,000,000, such notes to mature in their entirety two years after date of issue with an option to extend the maturity of such notes for a period of three years, with the consent of this Commission; and

The Commission having, by orders dated October 28, 1946 and April 22, 1947, extended to November 1, 1947 the time within which Niagara Hudson must dispose of its interests in Buffalo Niagara; and Niagara Hudson having, within this intervening period, reduced the amount of its bank indebtedness incurred under the plan from \$40,000,000 to \$28,500,000, and having represented that payments of \$1,500,000 and \$1,100,000 will be made on or before November 1, 1947 and February 1, 1948, respectively, so that at the latter date the indebtedness will be reduced to \$25,900,000.

Niagara Hudson having requested the Commission to enter an order (1) extending to May 1, 1948 the time within which it must dispose of its interest in Buffalo Niagara and (2) consenting to an extension of time to November 1, 1950 for final payment of all obligations to

the banks under its credit agreement dated July 12, 1945, as amended February 7, 1947; and

Niagara Hudson, having stated that its subsidiaries, Buffalo Niagara, Central New York Electric Company and New York Power and Light Company, have pending before the Public Service Commission of the State of New York, an application for consent and approval for the consolidation of these subsidiaries into Buffalo Niagara as the single surviving corporation, concerning which a hearing has been called by that commission to be held on October 16, 1947; and

Niagara Hudson having further stated that it anticipates a decision with respect to the pending application by the Public Service Commission on or before May 1, 1948, after which the matter will be submitted to us for consideration, and represents that in the event the proposed consolidation is consummated, it will forthwith proceed to present a program designed to bring about further simplification of its own capital structure through elimination of its own preferred stocks and payment of its bank notes, with a view to the eventual elimination of Niagara Hudson as a public utility holding company.

It appearing to the Commission that it is appropriate in the public interest and the interests of investors that notice of the filing of said request for extension of time and opportunity for requesting a hearing thereon be given to all interested persons;

It is ordered, That notice of the filing of Niagara Hudson's request (1) for an extension to May 1, 1948 of the time in which to dispose of its interests in Buffalo Niagara, and (2) an extension of time to November 1, 1950, for final payment of its bank obligations created under its credit agreement dated July 12, 1945, as amended February 7, 1947, be given to Niagara Hudson Power Corporation, the Public Service Commission of the State of New York, and the Federal Power Commission, by mailing copies of this notice of filing by registered mail, and to all other persons by publication thereof in the FEDERAL REGISTER.

Any interested person may, not later than October 15, 1947, at 5:30 p. m. e. s. t., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues, if any, of fact or law raised by said application proposed to be controverted, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 18th and Locust Streets, Philadelphia 3, Pennsylvania. At any time after 5:30, October 15, 1947, the Commission may take such action as may be deemed appropriate with respect to Niagara Hudson's request.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 47-9197; Filed, Oct. 13, 1947;
8:46 a. m.]

[File No. 68-93]

STANDARD GAS AND ELECTRIC CO.

ORDER ACCELERATING EFFECTIVENESS OF DECLARATION AND GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Philadelphia, Pa., on the 8th day of October 1947.

In the matter of John P. Wagner, John H. Harmon, Edward M. Goemans, and Jouett Shouse, as a protective committee for Standard Gas and Electric Company prior preference stock \$7 and \$6 cumulative, File No. 68-93.

A declaration and amendments thereto regarding the solicitation of holders of Prior Preference Stock, \$7 and \$6 Cumulative, of Standard Gas and Electric Company, a registered holding company, pursuant to Rule U-62 promulgated under the Public Utility Holding Company Act of 1935 and an application under paragraph (j) of said Rule U-62 for the solicitation of both the holders of the \$7 and \$6 series of said Prior Preference Stock having been filed by John P. Wagner, John H. Harmon, Edward M. Goemans, and Jouett Shouse, as a Protective Committee for Standard Gas and Electric Company Prior Preference Stock, \$7 and \$6 cumulative; and

Said application under paragraph (j) of Rule U-62 reciting that the applicants-declarants intend and commit themselves to take no part whatsoever in any consideration or determination of any question of division between the \$7 and \$6 series of said Prior Preference Stock; and

The applicants-declarants having requested that said declaration, as amended, be permitted to become effective forthwith; and

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors to grant said application and to accelerate the effectiveness of said declaration, as amended:

It is ordered, That said application and said declaration, as amended, be, and they hereby are, granted and permitted to become effective forthwith.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 47-9199; Filed, Oct. 13, 1947;
8:46 a. m.]

[File No. 70-1505]

MIDDLE WEST CORP.

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Philadelphia, Pa., on the 7th day of October A. D. 1947.

Notice is hereby given that The Middle West Corporation ("Middle West"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935. The declarant has designated section 12 (d) of the act and Rule U-44 thereunder as applicable to the transactions proposed.

Notice is further given that any interested person may, not later than October 14, 1947 at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest and the issues of fact or law raised by said declaration, as amended, which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 18th and Locust Streets, Philadelphia 3, Pennsylvania. At any time after October 14, 1947, said declaration, as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rule U-20 (a) and Rule U-100 thereof.

All interested persons are referred to said declaration which is on file in the offices of this Commission for a statement of the transactions therein proposed which are summarized as follows:

Public Service Company of Indiana, Inc. ("Service Company") a subsidiary of Middle West and the parent of Indiana Gas & Water Company, Inc. ("Gas-Water") has adopted a program of distributing to its own common stockholders its holdings of the common stock, \$10 par value, of Gas-Water in the form of quarterly dividends in lieu of cash dividends at the rate of $\frac{1}{20}$ share of Gas-Water common on each share of Service Company common. Under this program the Board of Directors of Service Company has declared a dividend, payable on September 1, 1947, in common stock of Gas-Water to the holders of its common stock of record, on August 14, 1947. Middle West, as the owner of 224,586 shares (approximately 20.27%) of the common stock of Service Company, received 11,229 $\frac{1}{2}$ shares of the common stock of Gas-Water.

Middle West proposes to sell said shares of Gas-Water common stock at a price of \$14.75 per share, for a total consideration of \$165,632.17, to P. C. Ward & Co., Inc., a personal holding company, for its own account and for the account of others set out below:

Purchasers	Number of shares
Ruth P. Griffith	1,500
William C. Griffith and Ruth P. Griffith, Trustees:	
For William C. Griffith, Jr.	1,000
For Charles P. Griffith	1,000
For Walter F. Griffith	1,000
Mary F. Hulman	1,200
Mary A. Hulman	2,800
Edith A. Ward	700
P. C. Ward & Co., Inc.	2,029 $\frac{1}{2}$

It is stated that Pierce C. Ward, the president of P. C. Ward & Co., Inc., and William C. Griffith are directors of Gas-Water and of Service Company. It is also stated that such purchases are for investment and not for resale or distribution.

The declarant requests that the Commission's order permitting such declaration to become effective be issued on or before October 10, 1947, and that it shall be effective forthwith.

No. 201—4

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 47-9196; Filed, Oct. 13, 1947; 9:00 a. m.]

[File No. 70-1593]

DELAWARE COACH CO. AND SOUTHERN PENNSYLVANIA BUS CO.

ORDER GRANTING APPLICATION AND PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its office in the city of Philadelphia, Pennsylvania, on the 7th day of October 1947.

Delaware Coach Company ("Delaware") a wholly-owned non-utility subsidiary of The United Gas Improvement Company, a registered holding company, and Delaware's wholly-owned non-utility subsidiary, the Southern Pennsylvania Bus Company ("Southern Penn"), having filed a joint application-declaration, with an amendment thereto, pursuant to sections 6, 9, 10 and 12 of the Public Utility Holding Company Act of 1935 and Rule U-43 promulgated thereunder with respect to the following transactions:

Southern Penn proposes to issue and sell 3,650 shares of its common capital stock, par value \$100 per share, to Delaware for a cash consideration of \$365,000. The proceeds of said sale together with other cash funds of the company will be applied to the purchase of new bus and garage equipment and property improvements.

The proposed transactions have been approved by the Pennsylvania Public Utility Commission.

The joint application-declaration having been filed August 15, 1947, and notice of said filing having been given in the form and manner prescribed by Rule U-23 promulgated pursuant to said act, and the Commission not having received a request for hearing with respect to said application-declaration within the period specified in said notice, or otherwise, and not having ordered a hearing thereon; and

The Commission finding with respect to this joint application-declaration that the applicable statutory standards are satisfied and that there is no basis for any adverse findings and deeming it appropriate in the public interest and in the interest of investors and consumers that said joint application-declaration be granted and permitted to become effective, and further deeming it appropriate to grant the request of applicants-declarants that this order should be effective upon issuance;

It is hereby ordered, Pursuant to said Rule U-23 and the applicable provisions of said act and subject to the terms and conditions prescribed in Rule U-24 that this joint application-declaration be, and the same hereby is, granted and permitted to become effective forthwith.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 47-9195; Filed, Oct. 13, 1947; 9:00 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 78th Cong., 69 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9783, Oct. 14, 1946, 11 F. R. 11931.

[Vesting Order 9341]

ELIZABETH VOSSKUHLE

In re: Stock, bonds and stamps owned by Elizabeth Vosskuhler. F-28-690-A-1, F-28-690-D-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9782, and pursuant to law, after investigation, it is hereby found:

1. That Elizabeth Vosskuhler, whose last known address is 73 Mainzerstrasser, Coblenz, Germany, is a resident of Germany, and a national of a designated enemy country (Germany)

2. That the property described as follows:

a. Ten (10) shares of \$100.00 par value preferred non-cumulative 7% dividend stock of A. N. Stollwerck, Inc., 1651 Haddon Avenue, Camden, New Jersey, evidenced by a certificate numbered 2, registered in the name of Elizabeth Vosskuhler, and presently in the custody of A. N. Stollwerck, Inc., 1651 Haddon Avenue, Camden, New Jersey, together with all declared and unpaid dividends thereon, and any all rights to the proceeds of redemption thereof,

b. Five (5) United States Savings Bonds, Series E, registered in the name of Elizabeth Vosskuhler, c/o A. N. Stollwerck, Inc., Camden, New Jersey, presently in the custody of A. N. Stollwerck, Inc., 1651 Haddon Avenue, Camden, New Jersey, together with any and all rights thereunder and thereto, and

c. Ninety (90) United States Defense Stamps of \$0.25 face value each, presently in the custody of A. N. Stollwerck, Inc., 1651 Haddon Avenue, Camden, New Jersey, together with any and all rights thereunder and thereto.

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

NOTICES

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 15, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 47-9215; Filed, Oct. 13, 1947;
8:46 a. m.]

[Vesting Order 9845]

LORENZ KRODINGER

In re: Estate of Lorenz Krodinger, deceased. D-28-10675; E. T. sec. 15024.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Karolina Krodinger, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany),

2. That all right, title, interest and claim of any kind or character whatsoever of the person named in subparagraph 1 hereof in and to the estate of Lorenz Krodinger, deceased, is property payable or deliverable to, or claimed by the aforesaid national of a designated enemy country (Germany),

3. That such property is in the process of administration by The Highland National Bank, as Executor, acting under the judicial supervision of the Probate Court of Madison County, Illinois; and it is hereby determined:

4. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

* The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 17, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[R. R. Doc. 47-9216; Filed, Oct. 13, 1947;
8:47 a. m.]

[Vesting Order 9847]

KATE LOHRI

In re: Estate of Kate Lohri, deceased. File D-28-10793-G-1.

Under the authority of the Trading with the Enemy Act, as amended; Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the personal representatives, heirs, next-of-kin, legatees and distributees of Kate Lohri, deceased, names unknown, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany)

2. That all right, title, interest and claim of any kind or character whatsoever of the persons identified in subparagraph 1 hereof, and each of them, in and to the estate of Kate Lohri, deceased, is property within the United States owned or controlled by, payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany)

3. That such property is in the process of administration by Half Dollar Trust and Savings Bank, as administrator, acting under the judicial supervision of the County Court of Ohio County, Wheeling, West Virginia;

and it is hereby determined:

4. That to the extent that the personal representatives, heirs next-of-kin, legatees and distributees of Kate Lohri, deceased, names unknown, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 17, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 47-9217; Filed, Oct. 13, 1947;
8:47 a. m.]

[Vesting Order 9858]

TETSUZO SAWATAKI AND TAKAMASA SHIBATA

In re: Debts owing to Tetsuzo Sawataki and Takamasa Shibata. D-39-10832-E-1, F-39-6054-E-1.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Tetsuzo Sawataki and Takamasa Shibata, each of whose last known address is Japan, are residents of Japan and nationals of a designated enemy country (Japan),

2. That the property described as follows: That certain debt or other obligation owing to Tetsuzo Sawataki by The Yokohama Specie Bank, Ltd., Los Angeles Office, Los Angeles, California, and/or Superintendent of Banks of the State of California and Liquidator of The Yokohama Specie Bank, Ltd., Los Angeles Office, c/o State Banking Department, 111 Sutter Street, San Francisco, California, arising out of fixed deposit certificate number 69506, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by Tetsuzo Sawataki, the aforesaid national of a designated enemy country (Japan),

3. That the property described as follows: That certain debt or other obligation owing to Takamasa Shibata by The Yokohama Specie Bank, Ltd., Los Angeles Office, Los Angeles, California, and/or Superintendent of Banks of the State of California, and Liquidator of The Yokohama Specie Bank, Ltd., Los Angeles Office, c/o State Banking Department, 111 Sutter Street, San Francisco, California, arising out of fixed deposit certificate number 68567, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by Takamasa Shibata, the aforesaid national of a designated enemy country (Japan),

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Japan)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 17, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 47-9218; Filed, Oct. 13, 1947;
8:47 a. m.]

[Vesting Order 9863]

GEORGE C. BOHN AND THEODOR WERNER

In re: Stock owned by George C. Bohn and stock owned by and debts owing to Theodor Werner. F-28-96-D-1, F-28-150-D-1.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9783, and pursuant to law, after investigation, it is hereby found:

1. That George C. Bohn and Theodor Werner, whose last known addresses are Germany, are residents of Germany and nationals of a designated enemy country (Germany)

2. That the property described as follows: Two hundred and fifty (250) shares of \$10.00 par value common capital stock of National Biscuit Company, 449 West 14th Street, New York, New York, a corporation organized under the laws of the State of New Jersey, evidenced by certificates numbered G2396 for one hundred (100) shares; G2397 for one hundred (100) shares and N995 for fifty (50) shares, registered in the name of George C. Bohn, together with all declared and unpaid dividends thereon, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evi-

dence of ownership or control by, George C. Bohn, the aforesaid national of a designated enemy country (Germany)

3. That the property described as follows:

a. One hundred and fifty-four (154) shares of \$10.00 par value common capital stock of National Biscuit Company, 440 West 14th Street, New York, New York, a corporation organized under the laws of the State of New Jersey, evidenced by certificates numbered G139654 for one hundred (100) shares and H240159 for fifty-four (54) shares, registered in the name of Theodor Werner, together with all declared and unpaid dividends thereon, and

b. Those certain debts or other obligations evidenced by the checks described in Exhibit A, attached hereto and by reference made a part hereof, presently in the custody of The First National Bank of the City of New York, 2 Wall Street, New York 15, New York, and any and all rights to demand, enforce and collect the aforesaid debts or other obligations and any and all accruals thereto, together with any and all rights in, to and under, including particularly the right to possession of, the aforesaid checks,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account

owing to, or which is evidence of ownership or control by, Theodor Werner, the aforesaid national of a designated enemy country (Germany)

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 19, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

Drawer	Drawee	Date	Dividend number	Amount	Drawer	Drawee	Date	Dividend number	Amount
First National Bank of the City of New York, dividend disbursing agent for National Biscuit Co.	Chase National Bank a/c Union Bank of Switzerland, Zurich a/c Theodor Werner Att. Foreign Paying and Receiving Tellers, 11 Broad St., New York, N. Y.	July 15, 1941	183	\$51.44	First National Bank of the City of New York, dividend disbursing agent for National Biscuit Co.	Chase National Bank a/c Union Bank of Switzerland, Zurich a/c Theodor Werner Att. Foreign Paying and Receiving Tellers, 11 Broad St., New York, N. Y.	Oct. 14, 1944	185	\$32.34
Do.....	do.....	Oct. 15, 1941	184	41.00	Do.....	do.....	Jan. 15, 1945	187	32.34
Do.....	do.....	Jan. 15, 1942	185	44.00	Do.....	do.....	Apr. 14, 1945	188	32.34
Do.....	do.....	Apr. 15, 1942	186	44.00	Do.....	do.....	July 14, 1945	189	32.34
Do.....	do.....	July 15, 1942	187	33.49	Do.....	do.....	Oct. 14, 1945	190	32.34
Do.....	do.....	Oct. 15, 1942	188	33.49	Do.....	do.....	Jan. 15, 1946	191	32.34
Do.....	do.....	Jan. 15, 1943	189	32.34	Do.....	do.....	Apr. 15, 1946	192	32.34
Do.....	do.....	Apr. 15, 1943	190	32.34	Do.....	do.....	July 15, 1946	193	32.34
Do.....	do.....	July 15, 1943	191	32.34	Do.....	do.....	Oct. 15, 1946	194	32.34
Do.....	do.....	Oct. 15, 1943	192	32.34	Do.....	do.....	Jan. 15, 1947	195	32.34
Do.....	do.....	Jan. 15, 1944	193	32.34	Do.....	do.....	Apr. 15, 1947	196	43.12
Do.....	do.....	Apr. 15, 1944	194	32.34	Do.....	do.....	July 15, 1947	197	43.12
Do.....	do.....	July 15, 1944	195	32.34					

[F. R. Doc. 47-9219; Filed, Oct. 13, 1947; 8:47 a. m.]

[Vesting Order 9821]

WOLFF G. BAWLITZA

In re: Bonds owned by Wolff G. Bawlitza. F-28-4846-A-1.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9783, and pursuant to law, after investigation, it is hereby found:

1. That Wolff G. Bawlitza, whose last known address is % Mrs. Erna Ehlert, Zietenstr. 26, Berlin 35, Germany, is a resident of Germany and a national of a designated enemy country (Germany)

2. That the property described as follows:

a. Two (2) Rosa Properties, Inc. 1st Mortgage R. E. 7% Bonds due September 24, 1935, each of \$500 face value,

bearing the numbers 15 and 20 presently in the custody of Corn Exchange Bank and Trust Company, Williams and Beaver Streets, New York 15, N. Y., together with any and all rights thereunder and thereto,

b. One (1) Savoy-Plaza Corporation 6% 1st Mortgage Bond due December 1, 1945 of \$1000 face value, bearing the number 1530 presently in the custody of Corn Exchange Bank and Trust Company, Williams and Beaver Streets, New York 15, N. Y., together with any and all rights thereunder and thereto, and

c. One (1) Two Park Avenue Building, 1st Mortgage R. E. 4% Bond due December 15, 1946 of \$1000 face value, bearing the number M3164 presently in the custody of Corn Exchange Bank and Trust Company, Williams and Beaver Streets, New York 15, N. Y., together

with any and all rights thereunder and thereto,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having

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been made and taken, and, it deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 15, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-9182; Filed, Oct. 10, 1947; 8:47 a. m.]

[Vesting Order 9897]

YOJIRO NISHIMOTO

In re: Insurance policy rights owned by Yojiro Nishimoto. File F-39-4857-H-1.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Yojiro Nishimoto, whose last known address is Japan, is a resident of Japan and a national of a designated enemy country (Japan)

2. That the net proceeds due or to become due under a contract of insurance evidenced by Policy No. 166921 issued by the West Coast Life Insurance Company, San Francisco, California, to Yojiro Nishimoto together with the right to demand, receive and collect said net proceeds, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan)

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on October 1, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-9185; Filed, Oct. 10, 1947; 8:48 a. m.]

[Vesting Order 9864]

SADAYOSHI KURAMOTO

In re: Bank account, stock and a claim owned by Sadayoshi Kuramoto, also known as S. Kuramoto. F-39-5250-A-1, C-1, C-2, D-2, E-1.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Sadayoshi Kuramoto, also known as S. Kuramoto, whose last known address is Japan, is a resident of Japan and a national of a designated enemy country (Japan)

2. That the property described as follows:

a. That certain debt or other obligation owing to Sadayoshi Kuramoto, by Bank of Hawaii, King and Bishop Streets, Honolulu, T. H., arising out of a savings account, Account Number 140079, entitled Sadayoshi Kuramoto, and any and all rights to demand, enforce and collect the same,

b. Five shares of \$50.00 par value common capital stock of Waialua Spring Water Works Co., Ltd., a corporation organized under the laws of the Territory of Hawaii, evidenced by certificate number 5, registered in the name of Sadayoshi Kuramoto, and presently in the custody of Sakae Kuramoto, 1767 Malani Street, Honolulu, T. H., together with all declared and unpaid dividends thereon, and

c. That certain debt or other obligation owing to Sadayoshi Kuramoto, by United States Fidelity and Guaranty Company, 848 Fort Street, Honolulu, T. H., in the amount of \$510.00, as of January 29, 1946, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by the aforesaid national of a designated enemy country (Japan),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not

within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein, shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 19, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-9220; Filed, Oct. 13, 1947; 8:47 a. m.]

[Return Order 49]

JULIEN DUNGLER

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,¹

It is ordered, That the claimed property, described below and in the determination, including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, be returned after adequate provision for taxes and conservatory expenses:

Claimant and Claim Number: Notice of Intention to Return Published; and Property

Julien Dungler, Basel, Switzerland, 5931; 12 F. R. 5375, August 7, 1947; Property described in Vesting Order No. 660 (8 F. R. 5047, April 17, 1943) relating to United States Letters Patent Nos. 2,117,603 and 2,118,375, including royalties pertaining thereto in the amount of \$16,960.00. This return shall not be deemed to include the rights of any licenses under the above patents.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on October 8, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-9224; Filed, Oct. 13, 1947; 8:48 a. m.]

¹ Filed as part of the original document.